

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No: 99/2013

Date of Institution ... 11.01.2013

Date of Decision: ... 14.01.2021

**SCANNED  
KPSI  
Peshawar**

Shah Faisal, Constable No.1760, son of Ghulam Ibrahim District Police,  
Bannu. ... (Appellant)

VERSUS

The District Police Officer, Bannu and two others. ... (Respondents)

Present.

Mr. Fazal Shah,  
Advocate. ... For appellant

Mr. Muhammad Rashid,  
Deputy District Attorney ... For respondents.

MR. HAMID FAROOQ DURRANI, ... CHAIRMAN  
MR. ATIQR REHMAN WAZIR, ... MEMBER(E)

JUDGMENTHAMID FAROOQ DURRANI, CHAIRMAN:-

1. Instant appeal has been preferred against the order dated 29.08.2012 passed by respondent No. 1. Through the order absence period of appellant from 14.10.2010 upto 19.04.2012 was treated as leave without pay. Another absence period from 05.10.2010 to 14.10.2010 was also given the same treatment. The appellant is also displeased with the order dated 23.11.2012 issued by respondent No. 2, whereby, his departmental appeal was filed.

2. The facts, as detailed in the memorandum of appeal, suggest that the appellant was appointed as Constable in the Police Department on 15.07.2009. During the course of his service, the appellant was discharged through an order by respondent No. 1. This Tribunal was consequently approached through Service Appeal No. 311/2011 which was decided on 02.02.2012. The appellant was reinstated into service with all back benefits

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2. The facts, as detailed in the memorandum of appeal, suggest that the appellant was appointed as Constable in the Police Department on 15.07.2009. During the course of his service, the appellant was discharged through an order by respondent No. 1. This Tribunal was consequently approached through Service Appeal No. 311/2011 which was decided on 02.02.2012. The appellant was reinstated into service with all back benefits



while the respondents were permitted to conduct proper departmental enquiry against him. Denovo enquiry was conducted and the enquiry officer submitted his findings. The proceedings culminated into order dated 29.08.2012, by virtue whereof, the appellant was exonerated from the charges and the enquiry was filed. His period of absence, as detailed herein above was, however, treated as leave without pay.

3. Learned counsel for the appellant as well as learned Deputy District Attorney on behalf of the respondents heard and available record perused.

4. Before proceeding further in the matter, it shall be useful to reproduce hereunder the concluding Paragraph (8) of the judgment passed in Appeal No. 311/2011:-

*"In view of the above, the appeal is accepted, the impugned order dated 14.10.2010 is set aside and the case is remanded to the department to conduct proper departmental enquiry against the appellant by providing him proper opportunity of defence strictly in accordance with the law. In the meantime, the appellant is reinstated into service with all back benefits. Parties are left to bear their own costs. File be consigned to the record."*

The above reproduction provides in clear and unequivocal terms that the appellant, inter-alia, was reinstated into service with all back benefits. The record is silent regarding setting aside of the judgment by the Apex Court rendering the judgment to have attained finality. On the other hand, through the impugned order dated 29.08.2012, the competent authority treated the absence period as leave without pay.


It thus shows that the competent authority as well as the departmental appellate authority brushed aside a portion of judgment rendered by a Tribunal of competent jurisdiction. The impugned part of the order is, therefore, not sustainable.

5. Learned DDA, while arguing the matter, referred to judgment reported as 2003-SCMR-228 . His contention was that the appellant was not entitled to the salary for the period when he remained absent from duty. The judgment in Appeal No.311/2011, inter-alia, suggests that the absence attributable to the appellant was 31 days, that too, on account of his ailment. Pertinently, in the impugned order dated 29.08.2012 the appellant was shown to have been absent for 18 months and 15 days. The period for which he remained discharged from duty also appears to have been added up.

Be that as it may, the appellant had earned a judgment in his favour from Tribunal of competent jurisdiction which was not disturbed at any forum. The respondents were, therefore, obligated to have honored the judgment in letter & spirit. More particularly, when the appellant was exonerated from the charges and the enquiry was filed.

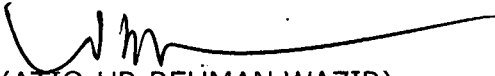

6. For what has been discussed above, the appeal in hand is allowed to the extent that impugned portion of order dated 29.08.2012, concerning the treatment of absence period as leave without pay, is set aside. Any content to that effect in the decision of departmental appeal dated 23.11.2012 is also to be disregarded.

Parties are, however, left to bear their respective costs. File be consigned to the record room.

  
(ATIQRUR REHMAN WAZIR)  
MEMBER(E)

  
(HAMID FAROOQ DURRANI)  
CHAIRMAN

ANNOUNCED  
14.01.2021

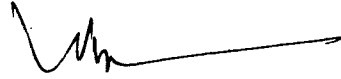
S.No.	Date of order/ proceedings.	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	14.01.2021	<p><u>Present.</u></p> <p>Mr.Fazal Shah, ... For appellant Advocate</p> <p>Mr. Muhammad Rashid, Deputy District Attorney ... For respondents.</p> <p>Learned counsel for the appellant as well as learned Deputy District Attorney on behalf of the respondents heard and available record perused.</p> <p>Vide our detailed judgment, the appeal in hand is allowed to the extent that impugned portion of order dated 29.08.2012, concerning the treatment of absence period as leave without pay, is set aside. Any content to that effect in the decision of departmental appeal dated 23.11.2012 is also to be disregarded.</p> <p>Parties are, however, left to bear their respective costs. File be consigned to the record room.</p> <p style="text-align: center;">         (ATIQ-UR-REHMAN WAZIR)        Member(E)     </p> <p style="text-align: right;">         CHAIRMAN     </p> <p><u>ANNOUNCED</u> 14.01.2021</p>

99/13

08.12.2020 Miss Rabia Muzaffar, Advocate on behalf of counsel for the appellant and Muhammad Jan, DDA alongwith Muhammad Farooq, Inspector (Legal) for the respondents present.

Former requests for adjournment as learned senior counsel for the appellant is engaged before the Honourable High Court today. Further instructions are <sup>also</sup> to be sought from the appellant. On the other hand, the representative of respondents states that the appellant was involved in an offense under Section 302 PPC recorded through FIR No. 838, dated 19.07.2018 at Police Station Cantt. Bannu. From the date of occurrence the appellant is at large.

The record shows that instant matter pertains to the year 2013 while the hearing was adjourned many times upon request on behalf of appellant. It is, therefore, adjourned to 14.01.2021 for hearing but as last chance .



(Atiq-ur-Rehman Wazir)  
Member(E)



Chairman

2. 4. 2020 Due to public Holiday on account  
of (COVID 19) the case is adjourned.  
To come up for same on 29. 6. 2020



29.06.2020

Due to COVID-19, the case is adjourned to 11.08.2020  
for the same.



Reader

11.08.2020

Due to summer vacations case to come up for the same on  
14.10.2020 before D.B.




Reader

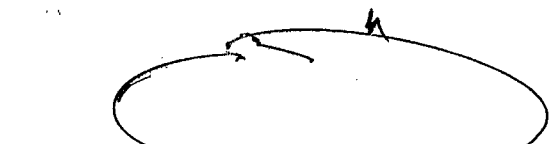
14.10.2020

Rabir Muzafar, advocate for appellant is present.  
Mr. Kabirullah Khattak learned Additional Advocate  
General alongwith Mr. Yaqoob Head Constable for  
respondents are also present.

Learned junior counsel requested for adjournment  
as senior counsel for appellant is busy before august  
Peshawar High Court Peshawar. Adjourned on which to  
come up for arguments on 08.12.2020 before D.B.



(Atiq Ur-Rehman Wazir)  
Member



(Muhammad Jamal Khan)  
Member

14.10.2019

Junior to counsel for the appellant present. Mr. Zia Ullah learned Deputy District Attorney alongwith Muhammad Farooq Inspector present. Junior to counsel for the appellant submitted application for adjournment. Application is allowed. Adjourn. To come up for arguments on 20.11.2019 before D.B.



Member



Member

20.11.2019

Junior Counsel for the appellant and Mr. Riaz Ahmad Paindakheil, Assistant AG for the respondents present. Junior counsel for the appellant requested for adjournment on the ground that learned senior counsel for the appellant is busy before the Hon'ble Peshawar High Court, Peshawar and cannot attend the Tribunal today. Adjourned to 14.01.2020 for arguments before D.B.



(Hussain Shah)  
Member



(M. Amin Khan Kundi)  
Member

14.01.2020

Due to general strike on the call of Khyber Pakhtunkhwa Bar Council, learned counsel for the appellant is not available today. Mr. Ziaullah, Deputy District Attorney for the respondents present. Adjourned to 24.02.2020 for arguments before D.B.



(Ahmad Hassan)  
Member



(M. Amin Khan Kundi)  
Member

24.02.2020

The bench is incomplete, therefore, the case is adjourned to 02.04.2020 before D.B.



Reader



10.05.2019

Nemo for appellant present. Addl: AG for respondents present.

It appears that on the last date of hearing the matter was adjourned due to general strike of the Bar while none of the party was marked present on 28.03.2019. Notice shall therefore, be issued to the parties for 28.06.2019 for arguments before D.B.

  
Member

  
Chairman

28.06.2019

Appellant absent. Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Farooq Inspector present. Learned AAG pleaded that the appellant is absconder in criminal case FIR No.838 dated 19.10.2018 u/s 302-324-404-34 PPC Police Station Saddar District Bannu and submitted documents to establish abscondance of the appellant in the murder case.

In the interest of justice, notice be issued to the learned counsel for the appellant for response to the plea taken by learned AAG. Adjourn. To come up for further proceedings/arguments on ~~28.07~~ 28.07.2019 before D.B

  
Member

  
Member

28.08.2019

Clerk to counsel for the appellant present. Asst. AG for respondents present. Clerk to counsel for the appellant seeks adjournment as learned counsel for the appellant is not available today. Case to come up for arguments on 14.10.2019 before D.B.

  
Member

  
Member

23.01.2019

Clerk of counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG for the respondents present. Clerk of counsel for the appellant requested for adjournment on the ground that learned senior counsel for the appellant is busy before the august Supreme Court of Pakistan and cannot attend the Tribunal today. Member copy of the present appeal is also not available therefore, learned counsel for the appellant is directed to furnish the same on or before the next date of hearing. Adjourned to 28.03.2019 for arguments before D.B.

  
(HUSSAIN SHAH)  
MEMBER

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

28.03.2019

Due to general strike of the bar, the case is adjourn. To come up for arguments on 10.05.2019 before D.B.

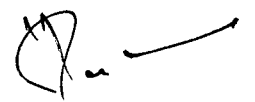
  
Member

  
Member

03.09.2018

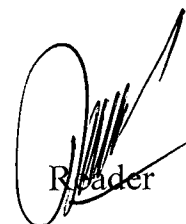
Appellant absent. Learned counsel for the appellant and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Asghar Ali, Head Constable for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 23.10.2018 before D.B.

  
(M. Amin Khan Kundi)  
Member

  
(M. Hamid Mughal)  
Member

23.10.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 07.12.2018.

  
Reader

07.12.2018

Counsel for the appellant present. Mr. Ziaullah, Deputy District Attorney for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 23.01.2019 before D.B.

  
(Ahmad Hassan)  
Member

  
(Muhammad Amin Khan Kundi)  
Member

14.12.2017 learned counsel for the appellant present. Mr. Usman Ghani, learned District Attorney for the respondents present. learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 19.02.2018 before D.B

  
(Gul Zeb Khan)  
MEMBER

  
(Muhammad Hamid Mughal)  
MEMBER

19.02.2018 Due to non availability of D.B. Adjourned. To come up on 23.04.2018 before D.B.


  
(Gul Zeb Khan)  
Member

23.04.2018 Learned counsel for the appellant and Mr. Kabir Ullah Khattak, learned Additional Advocate General present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 06.07.2018 before D.B. Learned counsel for the appellant is directed to provide member copy on the date fixed.

  
(Ahmad Hassan)  
Member

  
(Muhammad Hamid Mughal)  
Member


06.07.2018 Counsel for the appellant in person present. Mr. Sardar Shoukat Hayat, Addl: AG for respondents present. Arguments could not be heard due to incomplete bench. To come up for arguments on 03.09.2018 before D.B.

  
(Muhammad Amin Kundi)  
Member

03.05.2017

Counsel for the appellant and Mr. Azghar Ali, HC alongwith Mr. Ziaullah, Government Pleader for the respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for final hearing on 24.08.2017 before D.B.

  
Member

  
Chairman

24.08.2017

Clerk to counsel for the appellant and Mr. Muhammad Jan, DDA alongwith Mr. Muhammad Farooq Khan, Inspector for respondents present. Clerk to counsel for the appellant seeks Adjournment as counsel for the appellant has gone for performing Hajj. Adjourned. To come up for arguments on 30.10.2017 before D.B.

  
(Gul Zeb Khan)  
Member

  
(Ahmad Hassan)  
Member

30.10.2017

None present for appellant. Mr. Kabirullah Khattak, Additional AG for the respondents present. Adjourned. To come up for arguments before the D.B on 14.12.2017.

  
Member

  
Chairman

19.07.2016

Clerk to counsel for the appellant and Mr. Asghar Ali, H.C alongwith Mr. Usman Ghani, Sr.GP for the respondents present. Requested for adjournment due to non-availability of learned counsel for the appellant. Adjourned for arguments to


~~16-9-16~~ before D.B.

  
MEMBER

  
MEMBER

16.09.2016


Clerk to counsel for the appellant and Mr. Asghar Ali, HC alongwith Addl. AG for respondents present. Clerk to counsel for the requested for adjournment. Request accepted. To come up for arguments on 21.12.2016.

  
Member


  
Member

21.12.2016

Appellant with counsel and Mr. Asghar Ali, H.C alongwith Assistant AG for the respondents present. Since other Member of the Bench is on leave therefore, arguments could not be heard. To come up for arguments on 03.05.2017 before D.B.

  
(MUHAMMAD AAMIR NAZIR)  
MEMBER

30.09.2015 Appellant in person and Mr. Mir Faraz Khan Inspector (legal) alongwith Mr. Ziaullah GP for respondents present. Arguments could not be heard due to learned Member (Judicial) is on official tour to D.I. Khan, therefore, case is adjourned to 4-2-16 for arguments.



Member

04.02.2016

Counsel for the appellant and Mr. Kabeerullah Khattak, Asstt. A.G with Mirfaraz Khan, Inspector Legal for the respondents present. Since the court time is over, therefore, case is adjourned to 22.4.16 for arguments.



MEMBER



MEMBER

22.04.2016

Counsel for the appellant and Mr. Yaqoob Shah, HC alongwith Mr. Usman Ghani, Sr. GP for respondents present. Appellant is directed to submit Member copy of the instant appeal. To come up for arguments on 19.07.2016.



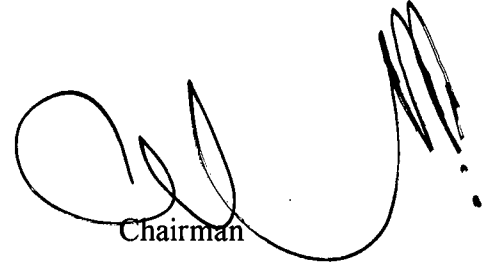
Member



Member

9 / 22.8.2014

Appellant with counsel and Mr. Kabir Khan Khattak, Assistant Advocate General for the respondents present. Rejoinder/replication received on behalf of the appellant, copy whereof is handed over to the learned AAG for arguments on 10.2.2015.



Chairman

10.2.2015

Appellant in person and Mr. Mir Faraz Khan, Inspector (Legal) with Muhammad Jan, GP for the respondents present. Due to general strike of the legal fraternity on murder of their colleague, counsel for the appellant is not available. Therefore, case is adjourned to 27.7.2015 for arguments.



MEMBER



MEMBER

27.07.2015

Appellant with counsel and Mr. Mir Faraz Khan, inspector (Legal) alongwith Addl: AG for the respondents present. Due to incomplete bench, case is adjourned to 30.09.2015 for arguments before D.B.



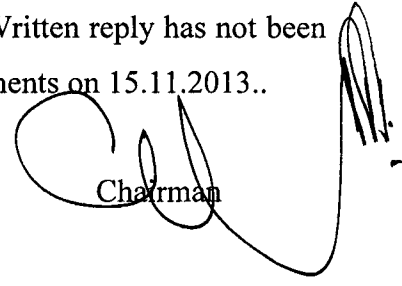
Chairman



6

12.7.2013

No one is present on behalf of the appellant. Mr. Usman Ghani, Sr. GP for the respondents present. Written reply has not been received. To come up for written reply/comments on 15.11.2013..

  
Chairman

18.11.2013

Since 15<sup>th</sup> November has been declared as public holiday on account of Moharram-ul-Haram, case is adjourned to 13-2-14 for further proceedings.

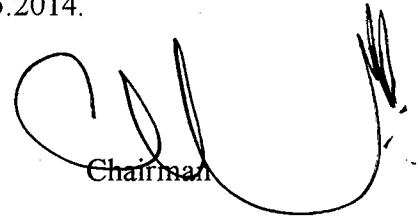


Reader

7

13.2.2014

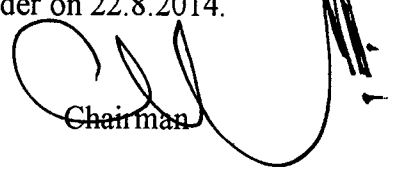
Counsel for the appellant and AAG for the respondents present. Neither representative of the respondents is present nor written reply has been filed. Another chance is given for written reply/comments with direction to the learned AAG to get in touch with respondents for written reply/comments, positively, on 14.5.2014.

  
Chairman

8

14.5.2014

Appellant with counsel and Mr. Mir Faraz Khan, Inspector (legal) for respondents with AAG present. Written reply received on behalf of the respondents, copy whereof is handed over to the learned counsel for the appellant for rejoinder on 22.8.2014.

  
Chairman

Appeal No. 99/2013,  
Shah Faisal,

3 18.2.20123

Appellant deposited  
Security & process fee Rs 180/-  
Bank receipt is attached  
with file  
Jhh

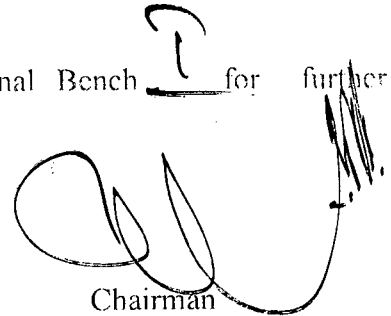
Counsel for the appellant present and heard. Contended that the appellant has not been treated in accordance with the law/rules. The original decision of this Tribunal in Appeal No. 3111/2011 which include the time period for which the appellant has been treated as leave without pay, with all back benefits and the Executive Authority cannot convert the judgment of the Tribunal/Courts through a simple order. Points raised at the Bar need consideration. The appeal is admitted to full hearing, subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Case adjourned to 2.5.2013 for submission of written reply.



Member.

4 18.2.2013

This case be put before the Final Bench          for further proceedings.

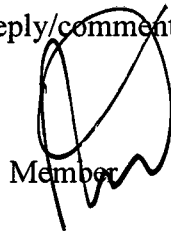


Chairman

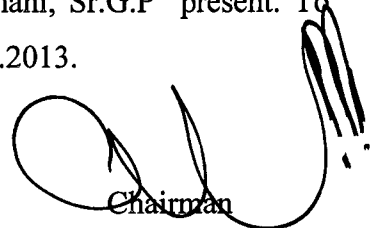
5

02.5.2013

Appellant in person and Mr. Mir Faraz Khan, Inspector (Legal) for respondents with Mr. Usman Ghani, Sr.G.P present. To come up for written reply/comments on 12.7.2013.



Member


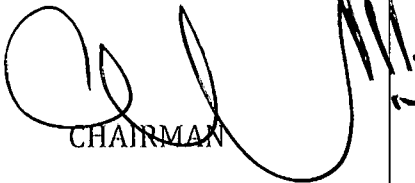


Chairman

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. 99 /2013

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	11/01/2013	<p>The appeal of Mr.Shah Faisal presented today by Mr.Fazal Shah Mohmand Advocate may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	15-1-2013.	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>18-2-2013</u></p> <p style="text-align: right;"> CHAIRMAN</p>

**BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR**

Service Appeal No <sup>99</sup> /2013

Shah Faisal Constable No 1760,..... Appellant

SCANNED  
KPST  
Peshawar

**VERSUS**

D P O & two others..... Respondents

**INDEX**

S No	Description of Documents	Annexure	Pages
1	Service appeal with affidavit		1-4
2.	Copy of order & judgment dated 02-02-2012	A	5-7
3.	Copy of charge sheet and reply	B & C	8-11
4	Copy of order dated 30-08-2012	D	12
5	Copy of departmental appeal dated 18-09-2012, order dated 23-11-2012 and application dated 24-12-2012	E, F & G	13-16
6.	Wakalat Nama		17

*SHAH*  
Appellant

Dated 11-01-2013

Through

*Fazal Shah*

**Fazal Shah Mohmand  
ADVOCATE PESHAWAR**

**OFFICE:-**

Cantonment Plaza Flat 3/B  
Khyber Bazar Peshawar  
Cell # 0301 8804841

Note :- Five spare copies attached

*Fazal Shah*  
Adv.

**BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR**

Service Appeal No <sup>99</sup>/2013

Shah Faisal Constable No 1760, S/O Ghulam Ibrahim District police  
Bannu ..... ( Appellant)

**VERSUS**

1. District Police Officer, Bannu
2. Regional Police Officer, Bannu Region, Bannu.
3. Provincial Police Officer, Khyber pukhtoon khwa Peshawar  
.....(Respondents)

**H. W. F. Province**  
**Revenue W/Officer**  
**Case No. 111**  
**Dated 11-1-2013**

APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974  
AGAINST THE ORDER DATED 23-11-2012 OF  
RESPONDENT NO 2 WHEREBY DEPARTMNETAL APPEAL  
OF THE APPELLANT FOR THE PAYMENT OF SALARIES  
FROM 05-10-2012 TO 19-04-2012) AGAINST THE ORDER  
DATED 30-08-2012 OF RESPONDENT NO 1 HAS BEEN  
FILED.

**PRAYER:-**

On acceptance of this appeal the impugned orders dated 23-11-2012 of Respondent No 2 and order dated 30-08-2012 of respondent No 1 may kindly be set aside and the appellant may kindly be paid the salaries of the period from 05-10-2010 to 19-04-2012.

**Respectfully Submitted:-**

1. That the appellant joined Police Department as Constable on 15-07-2009 and since then performed his duties with honesty and full devotion and to the entire satisfaction of his superior officers.
2. That the appellant was discharged from service by respondent No 1, against which he after exhausting departmental remedy

**Filed to-day**  
**11/1/2013**

approached the KPK Service Tribunal for his re-instatement in Service appeal No 311/2011.

3. That the service appeal of the appellant was finally accepted in the following terms:-

**"In view of the above, the appeal is accepted, the impugned order dated 14-10-2010 is set aside and the case is remanded to the department to conduct proper departmental inquiry against the appellant by providing him proper opportunity of defence strictly in accordance with law. In the meantime the appellant is reinstated into service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room."**

(Copy of the order and judgment is enclosed as Annexure A).

4. That after reinstatement in service the appellant was issued charge sheet with statement of allegations which was replied in detail explaining the true circumstances. (Copy of charge sheet and reply are enclosed as Annexure B and C).
5. That there after inquiry was conducted and the inquiry officer submitted his finding. ~~Copy of the inquiry findings is enclosed as Annexure D.~~ W
6. That finally the appellant was exonerated by respondent No 1 from the charges, the inquiry was filed but instead the period from 05-10-2010 to 19-04-2012 was treated as leave without pay by respondent No 1 vide order dated 30-08-2012. (Copy of the order is enclosed as Annexure D).
7. That the appellant preferred departmental appeal before respondent No 2 on 18-09-2012 which was filed vide order dated 23-11-2012, copy of which was provided to appellant on his application on 24-12-2012. (Copy of departmental appeal, order dated 23-11-2012 and application are enclosed as Annexure E, F and G).
8. That the impugned orders dated 23-11-2012 of respondent No 2 and order dated 30-08-2012 of respondent No 1 are against

the law, facts and principles of justice on grounds inter alia as follows:-

**GROUND:-**

- A. That the impugned orders are illegal and void ab-initio.
- B. That the appellant has not been treated in accordance with law and mandatory provisions of law have been violated by the respondents and the respondents have violated all norms of justice.
- C. That the impugned orders are in violation of the order and judgment of this honorable Tribunal, because this honorable tribunal had reinstated the appellant into service with all back benefits but instead the respondents have treated the same period as leave without pay, which is not tenable in law.
- D. That no show cause notice was issued to the appellant.
- E. That astonishingly respondent No 1 has exonerated the appellant from charges and have filed the inquiry as well but instead the period has been treated as leave with out pay.
- F. That it is admitted fact that the appellant had illegally been discharged from service and in such circumstances the civil servant is entitled to reinstatement with all back benefits as per the dictums of Superior Courts.
- G. That even the inquiry officer has held that the appellant has already been convicted and punished for his absence period mentioned in the charge sheet and thus can not be punished again for his absence period.
- H. That even the action has been taken under the law which is not applicable in case of the appellant, which has been held by this honorable tribunal in its order and judgment and also because the alleged misconduct is of the period when the RSO (2000) was applicable.

I. That the appellant has few years of service with Unblemished service record and the appellant remained jobless since his illegal discharge from service.

J. That the appellant seeks the permission of this honorable Tribunal for further/additional grounds at the time of arguments.

It is therefore prayed that appeal of the appellant may kindly be accepted as prayed for.

*SHAH*  
Appellant

Dated 09-01-2013

Through

*Fazal Shah*

Fazal Shah Mohmand  
Advocate Peshawar

### AFFIDAVIT

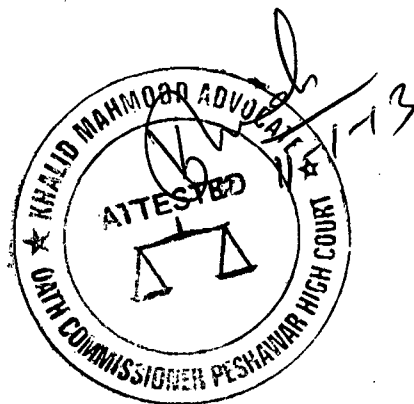
I, Shah Faisal Constable No 1760, S/O Ghulam Ibrahim District police Bannu, do hereby solemnly affirm and declare on oath that the contents of this Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

*SHAH*  
DEPONENT

Identified by

*Fazal Shah*

Fazal Shah Mohmand  
Advocate Peshawar





BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 311/2011

Date of Institution. .. 12.2.2011  
Date of Decision .. 02.2.2012



Shah Faisal, Ex-Constable No. 505, S/O Ghulam Ibrahim,  
R/O Kot Bali, Tehsil and District, Bannu.

(Appellant)

VERSUS

1. District Police Officer, Bannu.
2. Regional Police Officer, Bannu Region, Bannu.
3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar. (Respondents)

APPEAL AGAINST THE ORDER DATED 14.10.2010 PASSED BY  
RESPONDENT NO.1 WHEREBY THE APPELLANT HAS BEEN  
DISCHARGED FROM SERVICE FROM THE DATE OF ABSENCE,  
AGAINST WHICH HIS DEPARTMENTAL APPEAL HAS NOT BEEN  
RESPONDED SO FAR DESPITE THE LAPSE OF MORE THAN 90 DAYS.

MR. FAZAL SHAH MOHMAND, Advocate ... For appellant

MR. SHERAFGAN KHATTAK,  
Addl. Advocate General, ... For respondents.

MR. SULTAN MAHMOOD KHATTAK, .. MEMBER  
MR. KHALID HUSSAIN, .. MEMBER

JUDGMENT

SULTAN MAHMOOD KHATTAK, MEMBER.- This appeal has been filed by Mohibullah, the appellant, against the order dated 14.10.2010, whereby he has been discharged from service from the date of absence. It has been prayed that on acceptance of the appeal, the impugned orders may be set aside and the appellant be reinstated into service with all back benefits.

2. Brief facts of the case, as averred in the memo: of appeal are that the appellant joined Police Department on 15.7.2009 and performed his duties with devotion. The appellant developed serious illness and was returned unqualified from PTC Hangu. He was again selected for the course and was to appear for the course on 5.10.2010, however, he reached for the course on the next day. The appellant informed his superiors and even handed over medical chits to the

respondents. He was discharged from service on the ground of absence for 31 days, vide order dated 14.10.2010. He submitted departmental appeal before respondent No. 2 on 11.11.2010, which elicited no response within the statutory period of ninety days, hence this appeal.

The appeal has been admitted to full hearing on 8.3.2011 and notices were issued to the respondents. Respondents have filed their joint written reply and contested the appeal. Rejoinder was also filed in rebuttal. Arguments heard and record perused

The learned counsel for the appellant argued that the appellant has not been treated in accordance with the law. The appellant has been discharge from service for the reason of absence from duty but no charge sheet/statement of allegations served upon him nor proper enquiry was conducted. No show cause notices was issued to him which were mandatory under the law. According to the judgment of the august Supreme Court as reported in 2009 SCMR-615, for award of major penalty, regular enquiry is must. Here in this case, no regular enquiry conducted. Moreover, the order is void ab-initio as the same has been passed under Rule 12.21, Police Rules, 1934. The civil servant is governed under the Khyber Pakhtunkhwa Civil Servants Act, 1973 where right of appeal has been provided and further that on promulgation of the Khyber Pakhtunkhwa Removal from Service (Special Power) Ordinance, 2000 will prevail and Police Rules, 1934 would not prevail over the same. In this respect, he relied on 2000-SCMR-75 and 2003-PLC (CS) 545. The learned counsel for the appellant further argued that absence of the appellant was not willful but due to his serious illness. He requested that the appeal may be accepted as prayed for.

5. The learned AAG argued that the appellant remained absent when he was under training without prior permission of the competent authority. He further argued that the appellant never informed his superiors about his illness nor moved any application regarding medical leave. He was under probation and has rightly be discharged from service under Rule 12.21 of Police Rules, 1934. He stated that the appellant has not preferred proper departmental appeal/representation to the appellate authority and the departmental appeal at annexure-C with the appeal is forged one. He requested that the appeal may be dismissed.

6. The Tribunal observes that in case of award of major punishment conduct of regular enquiry is must as per 2009-SCMR-615, but no such enquiry has been conducted in the instant case and moreover, the appellant has been


**ATTESTED**

Khyber Pakhtunkhwa  
 Service Tribunal,  
 Peshawar

discharged from service under Police Rules, 1934, whereas the appellant was to be proceeded under the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000. Hence the impugned order is illegal and could not be sustained.

8. In view of the above, the appeal is accepted, the impugned order dated 14.10.2010 is set aside and the case is remanded to the department to conduct proper departmental enquiry against the appellant by providing him proper opportunity of defence strictly in accordance with the law. In the meantime, the appellant is reinstated into service with all back benefits. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED  
2.2.2012.

  
(KHALID HUSSAIN)  
MEMBER

  
(SULTAN MAHMOOD KHATTAK)  
MEMBER

Certified to be true copy

  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation of Appeal 3-3-2012

Number of Pages 100

Copying Charges 8

Urgent 2

Total 10

Name of Applicant [Signature]

Date of Filing 3-3-2012

Date of Disposal 3-3-2012

CHARGE SHEET.

B  
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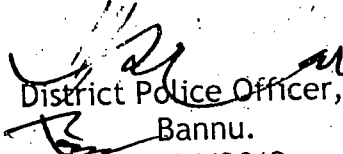
WHEREAS I am satisfied that a formal enquiry as contemplated in the NWFP, Police Rules, 1975 is necessary and expedient.

AND WHEREAS, I am of the view that the allegations if established would call for a major penalty as defined in Rules 4(b) of the aforesaid Rule.

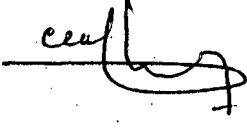
NOW, THEREFORE, as required in 6-1 (a) of the aforesaid Rule I, WAQAR AHMAD District Police Office, Bannu, as competent authority, hereby charge you constable Shah Faisal No. 1760 for the allegations, attached with this charge sheet.

AND I direct you further under rules 6-1 (b) of the aforesaid Rules to put in written defense within 7 days of the Receipt of this Charge sheet as to whether major OR Minor punishment as defined in Rules 4-1(a)-(b) should not be awarded to you. Also state at the same time whether you desire to be heard in person.

In case, your reply is not received within the prescribed period without sufficient reason, it would be presumed that you have nothing to say in your defense and the undersigned would be at liberty to take ex-parte action straight away against you.

  
District Police Officer,  
Bannu.  
21/04/2012

Attested

  
AKU


SUMMARY OF ALLEGATIONS.

9

You recruit constable Shah Faisal No. 1760 while posted to police lines Bannu were found to indulge in misconduct under the following allegations:-

- That you were selected for recruit course on dated 05-10-2010 but instead of joining the said course you absented yourself deliberately from official duty with intention to avoid the said course.
- That your service record was perused and it was found that you have already been selected for the said course on several different occasions but each time you have dithered to join/undergo the said course for which you have been awarded different punishments by the then competent authority, still you have not changed your attitude.
- That the then competent authority, keeping in view your dotted record and the above misconduct, discharged you under police rule 12:21. On dated 02-02-2012, the Honourable K.P.K Service tribunal ordered your reinstatement into service as well as initiating denove enquiry into the allegations leveled against you.
- That the undersigned has perused your service record which transpires that you were enlisted on 15-07-2009 and discharged on dated 14-10-2010. During the short period of service i.e one year, you have remained absent for a period 3 of months and 25 days which reflects that you are habitual absentee, unwilling worker, incorrigible as evident from your dotted service record.
- That it is also clear that on 05-10-2010 you have deliberately absented form official duty with intention to avoid the recruit course. Hence you have ceased to become a good police officer by committing the above commission/omission.
- All the above speaks of gross misconduct on your part.

  
District Police Officer,  
Bannu.

Attested  
  
Adv

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/ 0

**BEFORE THE HONORABLE DISTRICT POLICE**

**OFFICER BANNU.**

Written reply /defense on behalf of Shah Faisal NO-1760 /respondent to the allegation put by District Police Officer Bannu.

That the following is the perawise written reply /defense on Behalf of the Shah Faisal NO-1760.

1. That I have been selected for recruit courses on 5-10-2010 but at that very time I was fallen in ill and in this respects I was got examine by M.O District Head Quarter Officer Teaching Hospital Bannu and further I was orally directed by the said Doctor /M.O to take rest. Therefore I did not attend the said recruit course and further more my absence from the said course is not deliberate one and further your predecessor District Police Officer namely Sajad Bangsh had already discharged the respondent for his absence on 14-10-2010 from service the under Police rule 12.21 that feeling aggrieved from the said order of discharged by the then D.P.O. the respondent moved departmental appeal 22-11-2010 , diary NO 7062 Deputy Inspector General Bannu and after that the respondent moved KPK Service Tribunal though an appeal which was accepted by learned Tribunal .
2. That Para NO 2 is correct only to the extent that the respondent was only selected for courses on two occasion reply to the absence on 2<sup>nd</sup> occasion is provided in Para 1 while on 1<sup>st</sup> occasion the respondent was fell in ill then he took 53 days bed rest advised by the doctor as the respondent was suffering from disease of RT-Sciatica. Therefore he was

A tested  
call of  
ADU

unable to procure his attendance and he left the training center for the purpose of taking bed rest and furthermore for his absence on 1<sup>st</sup> occasion the police department proceeded against him and two penalties were imposed on him.

One year increment was stopped and secondly were considered without pay by the police department.

3. That the then competent authority discharged me under police rule 12.21 but this order on appeal by the appellant to the service tribunal was declared null and void by the said service tribunal and the respondent was restrained and so far as departmental inquiry ordered by the service tribunal is concerned the same will serve no useful purpose for the reasons that on both the occasion the respondent has provided sufficient reasons for his absence from his duty.
4. That the respondent has never absented for a period a 3 months 25 days but he was only remained absence up to the extent of 53 days only and his this 53 days absence was because of his ailment /deaseas.
5. That Para NO 5 is incorrect and further more the respondent has never absented himself from his duty deliberately but his absence was due to his illness. The respondent is caring good moral character and law abiding constable and is a fit person to become a good police officer.
6. That Para No 6 is incorrect and further the respondent is having good moral conduct and is having great reverence , respect and honor for his highups and for police department.

Dated .....

Shah Faisal.....

SHAH Faisal

Attested

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Ado

ORDER:

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My this order will dispose of departmental proceeding initiated under disciplinary rules 1975 against constable Shali Faisal No. 1760 on the following summary of allegations:

- That he was selected for recruit course on dated 05-10-2010 but instead of joining the said course he deliberately absented himself from official duty with intention to avoid the said course.
- That his service record was perused and it was found that he had already been selected for the said course on several occasions but each time he dithered to join/undergo the said course for which he had been awarded different punishments by the then competent authority still he did not change his attitude.
- That the then competent authority, keeping in views his dotted record and the above misconduct, discharged him under police rule 12:21. On dated 02-02-2012, the honorable K.P.K Service tribunal ordered his reinstatement into service with all back benefit as well as initiating denove enquiry into the allegations leveled against him. His service record also transpired that he was enlisted on dated 14-10-2010. During the short period of service he remained absent for a period of 3 months and 25 days which reflected that he was habitual absentee, unwilling worker, incorrigible.
- That it was also clear that on 05-10-2010 he had deliberately absented from official duty with intention to avoid the recruit course. Hence he had ceased to become a good police officer by committing the above commission/omission.

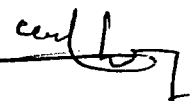
As per the direction of Service tribunal the said constable was reinstated into service and allotted him constabulary No. 1760 and Denove enquiry was initiated. Proper charge sheet based upon summary of allegations was issued and served upon the accused official on dated 21-04-2012. Replies of the accused along with relevant papers were entrusted to DSP/Elite for thorough probe into the allegations. Who (enquiry officer) submitted his findings wherein he opined that non joining the recruit course as well as deliberate absence from official duty w.e.f 05-10-2010 to 14-10-2010 have been proved while the remaining allegations were reported to be disproved. Resultantly, opportunity of personal hearing was provided to the accused official in orderly room on dated 17/04/2012 wherein he promised on affidavit that he shall join/complete the incoming recruit course failing which he shall be render himself to be discharged from service or dismissed accordingly. Therefore, keeping in view his statement on affidavit the undersigned exonerated him from the charges.

Keeping in view the above, decision of the honorable service tribunal K.P.K Peshawar and guidance received from CPO, Peshawar vide his office No. 2402/Legal dated 03-08-2012 in the instant case I, WAQAR AHMAD District police officer, Bannu in exercise of the power vested in me under Disciplinary rule 1975 the inquiry papers are ordered to be filed and the interim period between the order of dismissal i.e dated 14-10-2010 and order of reinstatement i.e dated 19-04-2012 (18 months and 5 days) is treated as leave without pay. The absence period from 05-10-2010 to 14-10-2010 is also treated as leave without pay. Pay is also released.

OB No. 289  
Dated 19/8/2012

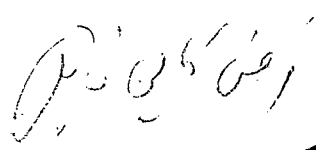
  
District Police Officer,  
Bannu.

No. 14010-13 dated Bannu, the 30 /2012.

Attested  


Copy of above is sent for necessary action to :

1. District Account Officer, Bannu.
2. ASP/Headquarter, Bannu.
3. R.I Police lines
4. ✓ SRC, Pay Officer and OASI.





To,

The Worthy Regional Police Officer,  
Bannu Region, Bannu.

Subject:-

**MERCY PETITION AGAINST THE ORDER PASSED BY  
DPO/BANNU ON DATED 809 dated 29-08-2012.**

Respectfully submitted:

- That the appellant had joined Police Department on dated 15-07-2009 and performed his duties with devotion. That the appellant developed serious illness and was returned unqualified from PTC Hangu. He was again selected for the course and was to appear for the course on 05-10-2010; however, he reached for the course on the next day. The appellant informed his superior and even handed over medical chits to competent authority. He was discharged from service on the ground of absence for 31 days vide OB No. 1146 dated 14-10-2010. He submitted departmental appeal before the then RPO/Bannu on dated 11-11-2010 which elicited no response within the statutory period of ninety days. Therefore, he preferred an appeal before the service tribunal which was accepted and the impugned order dated 14-10-2010 was set aside and the case was remanded to the department to conduct proper departmental enquiry against the appellant by providing him proper opportunity of defence strictly in accordance with the law. In the meantime, the appellant was reinstated into service with all back benefits vide judgment dated 02-02-2012.
- That DPO/Bannu requested PPO, KPK Peshawar vide his office memo No. 3310-11 dated 03-03-2012 that the said judgment may be examined through law department and Advocate General K.P.K Peshawar as to whether it is fit for lodging an appeal in Apex Supreme Court of Pakistan or otherwise. Resultantly, law department was approached through proper channel vide CPO, Peshawar memo No. 943/Legal dated 13-03-2012 etc. Law Department inform the PPO.KPK Peshawar and Secretary to Govt: K.P.K Home & Tribal Affairs Department vide his office letter No. lit/LD/1-9-(35) Home/2012/5088.92 dated Peshawar the 31-03-2012 to the effect that Committee has unanimously decided it is not a fit case for filing of CPLA before the Supreme Court of Pakistan. PPO, KPK Peshawar forwarded the instruction of Law Department vide his office endst: No. 1233/Legal dated 05-04-2012 for necessary action.
- Resultantly the appellant was reinstated into service as directed by Service tribunal vide DPO office order enst: No. 423 dated 19-04-2012 but no salary was given to the appellant. As per law the appellant salary was to released ultimately with all back benefit as there is no provision of stoppage pay but the appellant was denied of the same
- That the appellant was proceeded departmentally. After conducting proper departmental enquiry, the E.O opined that only the charge of non attendance recruit has been proved against the appellant.
- During personal hearing the appellant was directed to record his statement on affidavit that he will join the recruit course. The appellant did as directed by the competent authority. In the meantime, DPO/Bannu sought guidance vide memo 9906 dated 27-06-2012 from CPO/Peshawar regarding granting of back benefit in spite of clear cut decision of Service tribunal duly approved by law department as well PPO/KPK, Peshawar. In response to his request AIG/ advised DPO/Bannu vide his memo No. 2402/Legal dated 03-08-2012 that the appellant was not reinstated in service with effect from the date of his dismissal as such he can not be paid the salaries of about 18 months. Therefore DPO/Bannu passed order on the enquiry vide his office 809 dated 29-08-2012 by filling the enquiry proceeding and declaring leave without pay the interim period of 18 months and 5 days.

All's well

and by

Atk

GROUND:

That the impugned order is contrary to the decision of the August Service tribunal as Supreme court of Pakistan because:

1. That the appellant has been reinstated into by service tribunal with all back befit duly endorsed by law department as well as CPO, Peshawar. Therefore, there was no need of guidance from CPO, Peshawar (AIG/Legal) as the said decision was already through CPO as well as approved by PPO/KPK Peshawar with the direction to DPO/Bannu for compliance. In the presence of clear decision of August Service tribunal the opinion of AIG Legal has no value but AIG/Legal has committed Contempt of court to somewhat by making himself as stumbling block in the way of the decision of the Apex court.
2. That the appellant was reinstated into service by Apex court with all back befit but there is case vide 2007 SCMR No. 855(Copy enclosed) that a civil servant was reinstated in service but refused by service tribunal to grant back befits to Civil servant. Supreme court accepted appeal of Civil Servant on the ground that Civil servant had not been found gainfully employed anywhere during relevant period and declared that depriving Civil servant from back benefits for the period for which he remained out of job without any fault of his, would be injustice and harsh. Similarly, the appellant has not been found gainfully employed anywhere during the relevant period by the enquiry officer/competent authority for which he remained out of job without any fault as the competent authority has filed enquiry proceeding against the appellant. Hence the order of competent authority by depriving the appellant with all back befit is against the verdict of Supreme Court and Service tribunal.
3. That similarly, in another decision of Apex Supreme Court vide 2006 SCMR 451 (copy enclosed) it was decided that salaries of the civil servant would not be withheld for the intervening period when he remained out of service without gainfully employed anywhere during the relevant period due to whimsical and arbitrary action of the functionaries.
4. That appellant has cited those decisions of the Apex Supreme which were filed against the decisions of Service tribunal but the appellant has been given all the back benefit by Service tribunal while the competent is denying the same which is injustice please.

Keeping in view the above, It is, therefore, humbly requested that the appellant may kindly be given all the back benefit as directed by Apex Service Tribunal because the opinion of AIG/Legal, in the presence of decision of August Service Tribunal, has no value please.

Your most obedient servant,

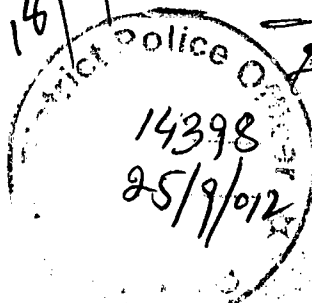
SHAH ul

(Shah Faisal No. 1760)

Police Lines Bannu Sir

Forwarded pl

do/Bannu  
18/9/12



Forwarded pl

General Khattar

105/110  
24/9

Mr P.T.

25/9

Attested call

جناب عالی!

گزارش ہے کہ سائل کی اپیل جناب RPO صاحب  
ہوئی لیکن ہونی نے فائل فرمایا ہے جسکی نقل سہولت  
اپیل درکار ہے

استماع سائل کو نقل حکم جناب  
RPO صاحب بتوں ترجمان ہوں دینے  
کا حکم صادر فرماوینے  
گزارش ہوگی

For report

24/12/12

2012  
24 دسمبر

العارض  
سائل کاٹنیل شاہ فیصل 1760 حال آکھنگو

جناب عالی

نقل کا پی دھول شاہ

شاہ منیل 1760

Attested:

RPO/BxU  
24/12

Attested  
At.

SHAH

26/12/2012

7-16/012 File

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Respected Sir,

It is submitted that Constable Shah Faisal No.1760 was discharged from his duty under Police Rule 12-21 on dated 02.02.2012 vide DPO Bannu order No.1146 dated 14.10.2012 (1146) due to deliberately absented from training program without any leave or prior permission from competent authority.

Appellant being aggrieved from the said order filed an appeal in Service Tribunal KPK Peshawar against the order of DPO Bannu No.1146 dated 14.10.2010.

Respondent Department contested the case through Additional Advocate General Khyber Pakhtunkhwa Peshawar.

The appeal vide No.311/2011 of the applicant was accepted, the impugned order vide 1146 dated 14.10.2010 was set aside and the case was remanded back to the Police Department for denovo enquiry against the appellant by providing him proper opportunity of defense in accordance with the law, in the meantime the appellant is reinstated into service with all back benefits. Judgment of Service Tribunal dated 02.02.2012 is enclosed as annexure "A".

The DPO Bannu forwarded the subject case to the Provincial Police Office to get an opinion from law department whether it is fit for appeal in the Apex Supreme Court of Pakistan, vide his letter No.3310-11 dated 03.03.2012. The Provincial Police Officer referred the case to law department for opinion vide No.941/legal dated 13.03.2011.

The committee in the law department decided unanimously it not fit ease for filing of CPLA before the supreme court of Pakistan.

The constable was reinstated into service with immediate effect vide OB No.423 dated 19.04.2012 DPO with initiation of denovo enquiry.

Denovo enquiry against the said constable was finalized and the absence period from 05.10.2010 to 14.10.2010 was treated as leave without pay. Period between date of dismissal and reinstated i.e. 18 months was treated leave without pay. The constable was reinstated vide DPO Bannu OB No.423 dated 19.04.2012.

The applicant moved an application before the DPO Bannu for back benefit "18 month salary". The DPO Bannu addressed a Provincial Police Officer, Khyber Pakhtunkhwa for opinion vide letter No.12647/SRC dated 19.07.2012.

The Assistant Inspector General of Police (Legal), Khyber Pakhtunkhwa Peshawar give opinion that the said constable was not paid the salaries as he was not reinstated in service with effect from the date of dismissal.

Worthy RPO Bannu

  
RPEO  
Range Office Bannu

PR speak

RPEO/-

Alleged

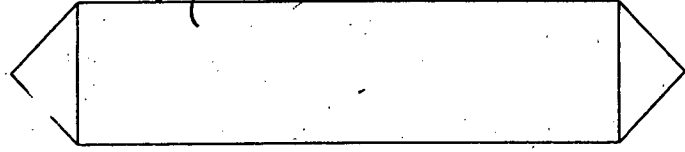
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Ad

19/12/12

The matter was discuss w/RPO order that DPO office got the opinion from AIG/L in light of his report the case is filed. and to visit the court again. RPEO 23/12

بعدالت بحیث میں ہر سروس ٹریڈنگ کے لئے



مورخہ 2013ء 9-10

مقدمہ

دعویٰ

جرم

2013ء منجانب

مشاہد حسین ولد غلام  
مشاہد حسین بنام حکومت  
راہ ایس ایم ایس

### باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ  
آن مقام لیٹنر اور کیلئے منسل مشاہد حسین راہ ایس ایم ایس  
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز  
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور  
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق  
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی  
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت  
مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے  
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے  
اور اس کا ساختہ پر داختم منظور قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے  
سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں  
گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

2013ء

9 ماہ جنوری

المرقوم

مشاہد حسین  
دلور علی شاہ

1-889611-0779689

Accepted & Altered

عدنان سٹیشنری مارٹ

چوک مشگری پٹارشی فون: 2220193

Mob: 0345-9223239

مقام

**BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR**

Service Appeal No 99/2013

*Members's  
Copy*

Shah Faisal Constable No 1760,..... Appellant

**VERSUS**

D P O & two others..... Respondents

**INDEX**

S No	Description of Documents	Annexure	Pages
1	Service appeal with affidavit		1-4
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3.	Copy of charge sheet and reply	B & C	8-11
4	Copy of order dated 30-08-2012	D	12
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*SHAH*  
Appellant

Dated 11-01-2013

Through

*Fazal Shah*  
Fazal Shah Mohmand  
ADVOCATE PESHAWAR

**OFFICE:-**

Cantonment Plaza Flat 3/B  
Khyber Bazar Peshawar  
Cell # 0301 8804841

**BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR**

Service Appeal No 99/2013

Shah Faisal Constable No 1760, S/O Ghulam Ibrahim District police  
Bannu .....( Appellant)

**VERSUS**

1. District Police Officer, Bannu
2. Regional Police Officer, Bannu Region, Bannu.
3. Provincial Police Officer, Khyber pukhtoon khwa Peshawar  
.....(Respondents)

APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974  
AGAINST THE ORDER DATED 23-11-2012 OF  
RESPONDENT NO 2 WHEREBY DEPARTMNETAL APPEAL  
OF THE APPELLANT FOR THE PAYMENT OF SALARIES  
FROM 05-10-2012 TO 19-04-2012 AGAINST THE ORDER  
DATED 30-08-2012 OF RESPONDENT NO 1 HAS BEEN  
FILED.

**PRAYER:-**

On acceptance of this appeal the impugned orders dated 23-11-2012 of Respondent No 2 and order dated 30-08-2012 of respondent No 1 may kindly be set aside and the appellant may kindly be paid the salaries of the period from 05-10-2010 to 19-04-2012.

**Respectfully Submitted:-**

1. That the appellant joined Police Department as Constable on 15-07-2009 and since then performed his duties with honesty and full devotion and to the entire satisfaction of his superior officers.
2. That the appellant was discharged from service by respondent No 1, against which he after exhausting departmental remedy

approached the KPK Service Tribunal for his re-instatement in Service appeal No 311/2011.

3. That the service appeal of the appellant was finally accepted in the following terms:-

"In view of the above, the appeal is accepted, the impugned order dated 14-10-2010 is set aside and the case is remanded to the department to conduct proper departmental inquiry against the appellant by providing him proper opportunity of defence strictly in accordance with law. In the meantime the appellant is reinstated into service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room."

(Copy of the order and judgment is enclosed as Annexure A).

4. That after reinstatement in service the appellant was issued charge sheet with statement of allegations which was replied in detail explaining the true circumstances. (Copy of charge sheet and reply are enclosed as Annexure B and C).
5. That there after inquiry was conducted and the inquiry officer submitted his finding. ~~(Copy of the inquiry findings is enclosed as Annexure D).~~ 2
6. That finally the appellant was exonerated by respondent No 1 from the charges, the inquiry was filed but instead the period from 05-10-2010 to 19-04-2012 was treated as leave without pay by respondent No 1 vide order dated 30-08-2012. (Copy of the order is enclosed as Annexure D).
7. That the appellant preferred departmental appeal before respondent No 2 on 18-09-2012 which was filed vide order dated 23-11-2012, copy of which was provided to appellant on his application on 24-12-2012. (Copy of departmental appeal, order dated 23-11-2012 and application are enclosed as Annexure E F and G).
8. That the impugned orders dated 23-11-2012 of respondent No 2 and order dated 30-08-2012 of respondent No 1 are against



the law, facts and principles of justice on grounds inter alia as follows:-

### **GROUND:-**

- A. That the impugned orders are illegal and void ab-initio.
- B. That the appellant has not been treated in accordance with law and mandatory provisions of law have been violated by the respondents and the respondents have violated all norms of justice.
- C. That the impugned orders are in violation of the order and judgment of this honorable Tribunal, because this honorable tribunal had reinstated the appellant into service with all back benefits but instead the respondents have treated the same period as leave without pay, which is not tenable in law.
- D. That no show cause notice was issued to the appellant.
- E. That astonishingly respondent No 1 has exonerated the appellant from charges and have filed the inquiry as well but instead the period has been treated as leave with out pay.
- F. That it is admitted fact that the appellant had illegally been discharged from service and in such circumstances the civil servant is entitled to reinstatement with all back benefits as per the dictums of Superior Courts.
- G. That even the inquiry officer has held that the appellant has already been convicted and punished for his absence period mentioned in the charge sheet and thus can not be punished again for his absence period.
- H. That even the action has been taken under the law which is not applicable in case of the appellant, which has been held by this honorable tribunal in its order and judgment and also because the alleged misconduct is of the period when the RSO (2000) was applicable.

I. That the appellant has few years of service with Unblemished service record and the appellant remained jobless since his illegal discharge from service.

J. That the appellant seeks the permission of this honorable Tribunal for further/additional grounds at the time of arguments.

It is therefore prayed that appeal of the appellant may kindly be accepted as prayed for.

Dated 09-01-2013

Through

  
Appellant

  
Fazal Shah Mohmand  
Advocate Peshawar

### AFFIDAVIT

I, Shah Faisal Constable No 1760, S/O Ghulam Ibrahim District police Bannu, do hereby solemnly affirm and declare on oath that the contents of this Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

  
DEPONENT

Identified by

  
Fazal Shah Mohmand  
Advocate Peshawar

Appeal No. 311/2011

Date of Institution. .. 12.2.2011  
Date of Decision .. 02.2.2012



Shah Eaisal, Ex Constable No. 505, S/O Ghulam Ibrahim,  
R/O Kot Bali, Tehsil and District, Bannu.

(Appellant)

VERSUS

1. District Police Officer, Bannu.
2. Regional Police Officer, Bannu Region, Bannu.
3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar. (Respondents)

APPEAL AGAINST THE ORDER DATED 14.10.2010 PASSED BY  
RESPONDENT NO.1 WHEREBY THE APPELLANT HAS BEEN  
DISCHARGED FROM SERVICE FROM THE DATE OF ABSENCE,  
AGAINST WHICH HIS DEPARTMENTAL APPEAL HAS NOT BEEN  
RESPONDED SO FAR DESPITE THE LAPSE OF MORE THAN 90 DAYS.

MR. FAZAL SHAH MOHMAND, Advocate

For appellant

MR. SHIRAZ GAN KHATTAK,  
Addl. Advocate General,

For respondents,

MR. SULTAN MAHMOOD KHATTAK,  
MR. KHALID HUSSAIN,

MEMBER  
MEMBER

JUDGMENT

SULTAN MAHMOOD KHATTAK, MEMBER.- This appeal has been filed by Mohibullah, the appellant, against the order dated 14.10.2010, whereby he has been discharged from service from the date of absence. It has been prayed that on acceptance of the appeal, the impugned orders may be set aside and the appellant be reinstated into service with all back benefits.

2. Brief facts of the case, as averred in the memo: of appeal are that the appellant joined Police Department on 15.7.2009 and performed his duties with devotion. The appellant developed serious illness and was returned unqualified from PTC Hangu. He was again selected for the course and was to appear for the course on 5.10.2010, however, he reached for the course on the next day. The appellant informed his superiors and even handed over medical chits to the

respondents. He was discharged from service on the ground of absence for 31 days, vide order dated 14.10.2010. He submitted departmental appeal before respondent No. 2 on 11.11.2010, which elicited no response within the statutory period of ninety days, hence this appeal.

2. The appeal has been admitted to full hearing on 8.3.2011 and notices were issued to the respondents. Respondents have filed their joint written reply and contested the appeal. Rejoinder was also filed in rebuttal. Arguments heard and record perused.

3. The learned counsel for the appellant argued that the appellant has not been treated in accordance with the law. The appellant has been discharge from service for the reason of absence from duty but no charge sheet/statement of allegations served upon him nor proper enquiry was conducted. No show cause notices was issued to him which were mandatory under the law. According to the judgment of the august Supreme Court as reported in 2009 SCMR-615, for award of major penalty, regular enquiry is must. Here in this case, no regular enquiry conducted. Moreover, the order is void ab-initio as the same has been passed under Rule 12.21, Police Rules, 1934. The civil servant is governed under the Khyber Pakhtunkhwa Civil Servants Act, 1973 where right of appeal has been provided and further that on promulgation of the Khyber Pakhtunkhwa Removal from Service (Special Provisions) Ordinance, 2000 with police and Police Rules, 1934 would not prevail over the same. In this respect, he relied on 2000-SCMR-75 and 2003-PLC (CS) 545. The learned counsel for the appellant further argued that absence of the appellant was not willful but due to his serious illness. He requested that the appeal may be accepted as prayed for.

4. The learned AAG argued that the appellant remained absent when he was under training without prior permission of the competent authority. He further argued that the appellant never informed his superiors about his illness nor moved any application regarding medical leave. He was under probation and has rightly be discharged from service under Rule 12.21 of Police Rules, 1934. He stated that the appellant has not preferred proper departmental appeal/representation to the appellate authority and the departmental appeal at annexure-C with the appeal is forged one. He requested that the appeal may be dismissed.

5. The Tribunal observes that in case of award of major punishment conduct of regular enquiry is must as per 2009-SCMR-615, but no such enquiry has been conducted in the instant case and moreover, the appellant has been

**ATTESTED**

discharged from service under Police Rules, 1934, whereas the appellant was to be proceeded under the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000. Hence the impugned order is illegal and could not be sustained.

8: In view of the above, the appeal is accepted, the impugned order dated 14.10.2010 is set aside and the case is remanded to the department to conduct proper departmental enquiry against the appellant by providing him proper opportunity of defence strictly in accordance with the law. In the meantime, the appellant is reinstated into service with all back benefits. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED  
2.2.2012.

*[Signature]*  
(KHALID HUSSAIN)  
MEMBER

*[Signature]*  
(SULTAN MAHMOOD KHATTAK)  
MEMBER

Certified to be true copy

*[Signature]*  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation of Application 3-3-2012  
Number of Petition 100  
Copies 8  
Fees 2  
Taks 10  
Name of Applicant [Signature]  
Date of Filing of Petition 3-3-2012  
Date of Filing of Reply 3-3-2012

CHARGE SHEET.

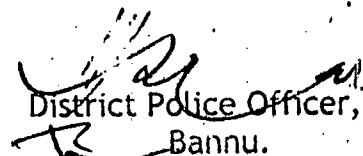
WHEREAS I am satisfied that a formal enquiry as contemplated in the NWFP, Police Rules, 1975 is necessary and expedient.

AND WHEREAS, I am of the view that the allegations if established would call for a major penalty as defined in Rules 4(b) of the aforesaid Rule.

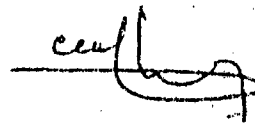
NOW, THEREFORE, as required in 6-1 (a) of the aforesaid Rule I, WAQAR AHMAD District Police Office, Bannu, as competent authority, hereby charge you constable Shah Faisal No. 1760 for the allegations, attached with this charge sheet.

AND I direct you further under rules 6-1 (b) of the aforesaid Rules to put in written defense within 7 days of the Receipt of this Charge sheet as to whether major OR Minor punishment as defined in Rules 4-1(a)-(b) should not be awarded to you. Also state at the same time whether you desire to be heard in person.

In case, your reply is not received within the prescribed period without sufficient reason, it would be presumed that you have nothing to say in your defense and the undersigned would be at liberty to take ex-parte action straight away against you.

  
District Police Officer,  
Bannu.  
21/04/2012

Attested



Atu

B  
/  
8


SUMMARY OF ALLEGATIONS.

9

You recruit constable Shah Faizal No. 1760 while posted to police lines Bannu were found to indulge in misconduct under the following allegations:-

- That you were selected for recruit course on dated 05-10-2010 but instead of joining the said course you absented yourself deliberately from official duty with intention to avoid the said course.
- That your service record was perused and it was found that you have already been selected for the said course on several different occasions but each time you have dithered to join/undergo the said course for which you have been awarded different punishments by the then competent authority still you have not changed your attitude.
- That the then competent authority, keeping in view your dotted record and the above misconduct, discharged you under police rule 12:21. On dated 02-02-2012, the Honourable K.P.K Service tribunal ordered your reinstatement into service as well as initiating de novo enquiry into the allegations leveled against you.
- That the undersigned has perused your service record which transpires that you were enlisted on 15-07-2009 and discharged on dated 14-10-2010. During the short period of service i.e one year, you have remained absent for a period 3 of months and 25 days which reflects that you are habitual absentee, unwilling worker, incorrigible as evident from your dotted service record.
- That it is also clear that on 05-10-2010 you have deliberately absented form official duty with intention to avoid the recruit course. Hence you have ceased to become a good police officer by committing the above commission/omission.
- All the above speaks of gross misconduct on your part.

  
District Police Officer,  
Bannu.

Attested  
  
Adv

BEFORE THE HONORABLE DISTRICT POLICE

OFFICER BANNU.

Written reply /defense on behalf of Shah Faisal NO-1760 /respondent to the allegation put by District Police Officer Bannu.

That the following is the perawise written reply /defense on Behalf of the Shah Faisal NO-1760.

1. That I have been selected for recruit courses on 5-10-2010 but at that very time I was fallen in ill and in this respects I was got examine by M.O District Head Quarter Officer Teaching Hospital Bannu and further I was orally directed by the said Doctor /M.O to take rest. Therefore I did not attend the said recruit course and further more my absence from the said course is not deliberate one and further your predecessor District Police Officer namely Sajad Bangshi had already discharged the respondent for his absence on 14-10-2010 from service the under Police rule 12.21 that feeling aggrieved from the said order of discharged by the then D.P.O. the respondent moved departmental appeal 22-11-2010, diary NO 7062 Deputy Inspector General Bannu and after that the respondent moved KPK Service Tribunal though an appeal which was accepted by learned Tribunal .
2. That Para NO 2 is correct only to the extent that the respondent was only selected for courses on two occasion reply to the absence on 2<sup>nd</sup> occasion is provided in Para 1 while on 1<sup>st</sup> occasion the respondent was fell in ill then he took 53 days bed rest advised by the doctor as the respondent was suffering from disease of RT-Sciatica. Therefore he was

A. K. Khatun  
Sd/-  
ADU



unable to procure his attendance and he left the training center for the purpose of taking bed rest and furthermore for his absence on 1<sup>st</sup> occasion the police department proceeded against him and two penalties were imposed on him.

One year increment was stopped and secondly were considered without pay by the police department.

3. That the then competent authority discharged me under police rule 12.21 but this order on appeal by the appellant to the service tribunal was declared null and void by the said service tribunal and the respondent was restrained and so far as departmental inquiry ordered by the service tribunal is concerned the same will serve no useful purpose for the reasons that on both the occasion the respondent has provided sufficient reasons for his absence from his duty.
4. That the respondent has never absented for a period a 3 months 25 days but he was only remained absence up to the extent of 53 days only and his this 53 days absence was because of his ailment /diseaseas.
5. That Para NO 5 is incorrect and further more the respondent has never absented himself from his duty deliberately but his absence was due to his illness. The respondent is caring good moral character and law abiding constable and is a fit person to become a good police officer.
6. That Para No 6 is incorrect and further the respondent is having good moral conduct and is having great reverence , respect and honor for his highups and for police department.

Dated .....

---

Shah Faisal.....

SHAH F  
D

A. H. S. S. S.

*[Handwritten signature]*

Ado

ORDER:

D  
12

My this order will dispose of departmental proceeding initiated under disciplinary rules 1975 against constable Shah Faisal No. 1760 on the following summary of allegations:

- That he was selected for recruit course on dated 05-10-2010 but instead of joining the said course he deliberately absented himself from official duty with intention to avoid the said course.
- That his service record was perused and it was found that he had already been selected for the said course on several occasions but each time he dithered to join/undergo the said course for which he had been awarded different punishments by the then competent authority still he did not change his attitude.
- That the then competent authority, keeping in views his dotted record and the above misconduct, discharged him under police rule 12:21. On dated 02-02-2012, the honorable K.P.K Service tribunal ordered his reinstatement into service with all back benefit as well as initiating denove enquiry into the allegations leveled against him. His service record also transpired that he was enlisted on dated 14-10-2010. During the short period of service he remained absent for a period of 3 months and 25 days which reflected that he was habitual absentee, unwilling worker, incorrigible.
- That it was also clear that on 05-10-2010 he had deliberately absented from official duty with intention to avoid the recruit course. Hence he had ceased to become a good police officer by committing the above commission/omission.

As per the direction of Service tribunal the said constable was reinstated into service and allotted him constabulary No. 1760 and Denove enquiry was initiated. Proper charge sheet based upon summary of allegations was issued and served upon the accused official on dated 21-04-2012. Replies of the accused along with relevant papers were entrusted to DSP/Elite for thorough probe into the allegations. Who (enquiry officer) submitted his findings wherein he opined that non joining the recruit course as well as deliberate absence from official duty w.e.f 05-10-2010 to 14-10-2010 have been proved while the remaining allegations were reported to be disproved. Resultantly, opportunity of personal hearing was provided to the accused official in orderly room on dated 17/04/2012 wherein he promised on affidavit that he shall join/complete the incoming recruit course failing which he shall be render himself to be discharged from service or dismissed accordingly. Therefore, keeping in view his statement on affidavit the undersigned exonerated him from the charges.

Keeping in view the above, decision of the honorable service tribunal K.P.K Peshawar and guidance received from CPO, Peshawar vide his office No. 2402/Legal dated 03-08-2012 in the instant case i, WAQAR AHMAD District police officer, Bannu in exercise of the power vested in me under Disciplinary rule 1975 the inquiry papers are ordered to be filed and the interim period between the order of dismissal i.e dated 14-10-2010 and order of reinstatement i.e dated 19-04-2012 (18 months and 5 days) is treated as leave without pay. The absence period from 05-10-2010 to 14-10-2010 is also treated as leave without pay. Pay is also released.

OB No. 1007  
Dated 17/04/2012

*[Signature]*  
District Police Officer,  
Bannu.

No. 1007-13 dated Bannu, the 30 /2012.

*[Signature]*  
Attested

Copy of above is sent for necessary action to :

1. District Account Officer, Bannu.
2. ASP/Headquarter, Bannu.
3. R.I Police lines
4. ✓ SRC, Pay Officer and OASI.

*[Signature]*

*[Signature]*  
Attested

1

E  
13

The Worthy Regional Police Officer,  
Bannu Region, Bannu.

Subject:- MERCY PETITION AGAINST THE ORDER PASSED BY  
DPO/BANNU ON DATED 809 dated 29-08-2012.

Respectfully submitted:

- That the appellant had joined Police Department on dated 15-07-2009 and performed his duties with devotion. That the appellant developed serious illness and was returned unqualified from PTC Hangu. He was again selected for the course and was to appear for the course on 05-10-2010; however, he reached for the course on the next day. The appellant informed his superior and even handed over medical chits to competent authority. He was discharged from service on the ground of absence for 31 days vide OB No. 1146 dated 14-10-2010. He submitted departmental appeal before the then RPO/Bannu o.. dated 11-11-2010 which elicited no response within the statutory period of ninety days. Therefore, he preferred an appeal before the service tribunal which was accepted and the impugned order dated 14-10-2010 was set aside and the case was remanded to the department to conduct proper departmental enquiry against the appellant by providing him proper opportunity of defence strictly in accordance with the law. In the meantime, the appellant was reinstated into service with all back benefits vide judgment dated 02-02-2012.
- That DPO/Bannu requested PPO, KPK Peshawar vide his office memo No. 3310-11 dated 03-03-2012 that the said judgment may be examined through law department and Advocate General K.P.K Peshawar as to whether it is fit for lodging an appeal in Apex Supreme Court of Pakistan or otherwise. Resultantly, law department was approached through proper channel vide CPO, Peshawar memo No. 943/Legal dated 13-03-2012 etc. Law Department inform the PPO.KPK Peshawar and Secretary to Govt: K.P.K Home & Tribal Affairs Department vide his office letter No. lit/LD/1-9-(35) Home/2012/5088.92 dated Peshawar the 31-03-2012 to the effect that Committee has unanimously decided it is not a fit case for filing of CPLA before the Supreme Court of Pakistan. PPO, KPK Peshawar forwarded the instruction of Law Department vide his office endst: No. 1233/Legal dated 05-04-2012 for necessary action.
- Resultantly the appellant was reinstated into service as directed by Service tribunal vide DPO office order endst: No. 423 dated 19-04-2012 but no salary was given to the appellant. As per law the appellant salary was to released ultimately with all back benefit as there is no provision of stoppage pay but the appellant was denied of the same
- That the appellant was proceeded departmentally. After conducting proper departmental enquiry, the D.O opined that only the charge of non attendance recruit has been proved against the appellant.
- During personal hearing the appellant was directed to record his statement on affidavit that he will join the recruit course. The appellant did as directed by the competent authority. In the meantime, DPO/Bannu sought guidance vide memo 9906 dated 27-06-2012 from CPO/Peshawar regarding granting of back benefit in spite of clear cut decision of Service tribunal duly approved by law department as well PPO/KPK, Peshawar. In response to his request AIG<sup>4</sup> advised DPO/Bannu vide his memo No. 2402/Legal dated 03-08-2012 that the appellant was not reinstated in service with effect from the date of his dismissal as such he can not be paid the salaries of about 18 months. Therefore DPO/Bannu passed order on the enquiry vide his office 809 dated 29-08-2012 by filling the enquiry proceeding and declaring leave without pay the interim period of 13 months and 5 days:

Allies (2)

cont. 54

Adk

GROUND:

That the impugned order is contrary to the decision of the August Service tribunal as Supreme court of Pakistan because:

1. That the appellant has been reinstated into by service tribunal with all back befit duly endorsed by law department as well as CPO, Peshawar. Therefore, there was no need of guidance from CPO, Peshawar (AIG/Legal) as the said decision was already through CPO as well as approved by PPO/KPK Peshawar with the direction to DPO/Bannu for compliance. In the presence of clear decision of August Service tribunal the opinion of AIG Legal has no value but AIG/Legal has committed Contempt of court to somewhat by making himself as stumbling block in the way of the decision of the Apex court.
2. That the appellant was reinstated into service by Apex court with all back befit but there is case vide 2007 SCMR No. 855(Copy enclosed) that a civil servant was reinstated in service but refused by service tribunal to grant back befits to Civil servant. Supreme court accepted appeal of Civil Servant on the ground that Civil servant had not been found gainfully employed anywhere during relevant period and declared that depriving Civil servant from back benefits for the period for which he remained out of job without any fault of his, would be injustice and harsh. Similarly, the appellant has not been found gainfully employed anywhere during the relevant period by the enquiry officer/competent authority for which he remained out of job without any fault as the competent authority has filed enquiry proceeding against the appellant. Hence the order of competent authority by depriving the appellant with all back befit is against the verdict of Supreme Court and Service tribunal.
3. That similarly, in another decision of Apex Supreme Court vide 2006 SCMR 451 (copy enclosed) it was decided that salaries of the civil servant would not be withheld for the intervening period when he remained out of service without gainfully employed anywhere during the relevant period due to whimsical and arbitrary action of the functionaries.
4. That appellant has cited those decisions of the Apex Supreme which were filed against the decisions of Service tribunal but the appellant has been given all the back benefit by Service tribunal while the competent is denying the same which is injustice please.

Keeping in view the above, It is, therefore, humbly requested that the appellant may kindly be given all the back benefit as directed by Apex Service Tribunal because the opinion of AIG/Legal, in the presence of decision of August Service Tribunal, has no value please.

Your most obedient Servant,

SHAH ul

(Shah Faisal No. 1760)

Police Lines Bannu

*Forwarded pl*

*do/Bannu*

*18/9/12*

*Forwarded pl*

14398  
25/9/12

*General Khan*  
*105/110*  
*24/9*

*25/9*

*Attested call*

جناب عالی!

گزارش ہے کہ سائل کی اپیل جناب RPO صاحب  
بنوری رجن بنوری نے فائل فرمایا ہے جسکی نقل منسلک  
اپیل درکار ہے۔

امتا عا سائل کو نقل حکم جناب  
RPO صاحب بنوری رجن بنوری  
کا حکم صادر فرما دیتے ہیں۔  
گزارش ہوگی۔

For report  
J/S  
24/12/12

24 دسمبر 2012

العارضہ  
سائل کا نیشنل شاہ فیصل 1760 حال آٹھ منگہ

جناب عالی

نقل کاپی وصول شدہ

Approved:

شاہ فیصل 1760

RPO/BxU  
24/12

Attest  
Ad.

SHAH  
26/12/2012

7-16/012 File

G/H  
16

Respected Sir,

It is submitted that Constable Shah Faisal No.1760 was discharged from his duty under Police Rule 12-21, on dated 02.02.2012 vide DPO Bannu order No.1146 dated 14.10.2012 (1146) due to deliberately absented from training program without any leave or prior permission from competent authority.

Appellant being aggrieved from the said order filed an appeal in Service Tribunal KPK Peshawar against the order of DPO Bannu No.1146 dated 14.10.2010.

Respondent Department contested the case through Additional Advocate General Khyber Pakhtunkhwa Peshawar.

The appeal vide No.311/2011 of the applicant was accepted, the impugned order vide 1146 dated 14.10.2010 was set aside and the case was remanded back to the Police Department for denovo enquiry against the appellant by providing him proper opportunity of defense in accordance with the law, in the meantime the appellant is reinstated into service with all back benefits. Judgment of Service Tribunal dated 02.02.2012 is enclosed as annexure "A".

The DPO Bannu forwarded the subject case to the Provincial Police Office to get an opinion from law department whether it is fit for appeal in the Apex Supreme Court of Pakistan, vide his letter No.3310-11 dated 03.03.2012. The Provincial Police Officer referred the case to law department for opinion vide No.941/legal dated 13.03.2011.

The committee in the law department decided unanimously it not fit ease for filing of CPLA before the supreme court of Pakistan.

The constable was reinstated into service with immediate effect vide OB No.423 dated 19.04.2012 DPO with initiation of denovo enquiry.

Denovo enquiry against the said constable was finalized and the absence period from 05.10.2010 to 14.10.2010 was treated as leave without pay. Period between date of dismissal and reinstated i.e. 18 months was treated leave without pay. The constable was reinstated vide DPO Bannu OB No.423 dated 19.04.2012.

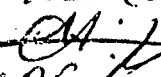
The applicant moved an application before the DPO Bannu for back benefit "18 month salary". The DPO Bannu addressed a Provincial Police Officer, Khyber Pakhtunkhwa for opinion vide letter No.12647/SRC dated 19.07.2012.

The Assistant Inspector General of Police (Legal), Khyber Pakhtunkhwa Peshawar give opinion that the said constable was not paid the salaries as he was not reinstated in service with effect from the date of dismissal.

Worthy RPO Bannu

  
RPO  
Range Office Bannu

*PR*  
*SP*  
*AD*  
*AD*  
*AD*  
*AD*  
*AD*

The matter was discussed w/RPO order that DPO office got the opinion from AIG/L in light of my report the case is filed.   
and to visit the court again. RPO 23/12

“B”

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.**  
**JUDICIAL COMPLEX (OLD), KHYBER ROAD,**  
**PESHAWAR.**

FR

No.

Seed

Appeal No. 99 of 2013

Shah faisal Appellant/Petitioner

Versus

D PO Banna Respondent

Respondent No. 1

Notice to: — D PO Banna

WHEREAS an appeal/petition under the provision of the North-West Frontier Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal \*on 2-5-13 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. ~~Copy of appeal has already been sent to you vide this office Notice No.....dated.....~~

Given under my hand and the seal of this Court, at Peshawar this 19

Day of 3 2013

Registrar,  
Khyber Pakhtunkhwa Service Tribunal,  
Peshawar.

- Note:
1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
  2. Always quote Case No. While making any correspondence.

**"B"**

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.  
JUDICIAL COMPLEX (OLD), KHYBER ROAD,  
PESHAWAR.**

FR 1

No.

Appeal No. 99 of 2013

Shah Faisal Appellant/Petitioner

Versus

1) P.O. Banna Respondent

Respondent No. 3

Notice to: - PPO KPK Peshawar

WHEREAS an appeal/petition under the provision of the North-West Frontier Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal \*on 5/13 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. ~~Copy of appeal has already been sent to you vide this office Notice No.....dated.....~~

Given under my hand and the seal of this Court, at Peshawar this 19<sup>th</sup>

Day of 3 20 13

*[Signature]*

*[Signature]*

Registrar,

Khyber Pakhtunkhwa Service Tribunal,  
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.  
2. Always quote Case No. While making any correspondence.



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No.99/2013

Shah Faisal Constable No.1760  
S/o Ghulam Ibrahim District Police Bannu

(Appellant)

**Versus**

- 1) District Police Officer, Bannu
- 2) Regional Police Officer, Bannu Region, Bannu
- 3) Provincial Police Officer, Khyber Pakhtunkhwa Peshawar

(Respondents)

**PARAWISE REPLY BY THE RESPONDENTS**

**Respectfully Sheweth:**

**PRELIMINARY OBJECTIONS:**

- 1) That the appeal of appellant is badly time barred.
- 2) That the appellant has approached the Honourable Tribunal with unclean hands
- 3) That the appellant is estopped to file the appeal due to his own conduct.
- 4) That the appeal is bad due to mis-joinder and non-joinder of necessary parties.
- 5) That the appellant has concealed the actual facts from the Honourable Tribunal.
- 6) That the appeal of appellant is not maintainable.

**OBJECTIONS ON FACTS:**

- 1) Incorrect. The appellant has willfully absented from the basic professional training/ courses on several occasions being habitual absentee and unwilling worker.
- 2) Pertains to record.
- 3) Pertains to record.
- 4) Pertains to record.
- 5) Correct.
- 6) Pertains to record.
- 7) The departmental appeal of the appellant was filed on the grounds that period between his dismissal and reinstatement i.e. about 18 months was rightly treated leave without pay by the Respondent No.1 after getting opinion from Respondent No.3. In fact, the appellant has not performed duty during this period.
- 8) Incorrect. Both the orders of the respondents are based on facts and in accordance with law and facts.

**OBJECTIONS ON GROUNDS:**


- A) Incorrect. The orders of the respondents are legal and based on facts and law.
- B) Incorrect. Proper inquiry in accordance with law was initiated against the appellant and after providing all the opportunities, a legal and valid order was passed.
- C) Incorrect. The order of the Honourable Tribunal has been complied in true spirit. On receipt of judgment and opinion of Law Department, the appellant was reinstated into service with immediate effect and de novo inquiry into the matter was conducted. On the basis of findings report, the

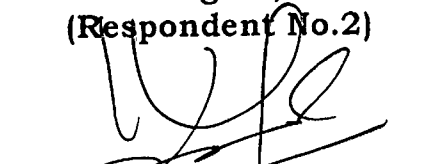
- inquiry was filed. Subject to he joined the recruit course and provide affidavit. The interim period between his dismissal and reinstatement was treated as leave without pay.
- D) There is no need of issuance show cause notice because the inquiry has been filed in favour of appellant.
- E) Inquiry was filed but the period between dismissal and reinstatement was treated leave without pay on the opinion/ directions of respondent No.3.
- F) Incorrect. The appellant was initially discharged from service on the basis of willful absence from professional course/ training and duty but due to some technical faults, the order of dismissal was converted into reinstatements and de novo inquiry. During the disposal of de novo inquiry, the appellant furnished an affidavit for joining the recruit course in future. He has not performed duty for the period 18 months 05 days between the dismissal dated 14.10.2010 and reinstatement dated 19.04.2012 for which he cannot be paid salary and rightly declared leave without pay. Photocopy enclosed as annexure "A".
- G) Incorrect. The inquiry officer has made reference to the punishment which was set asided by the Honourable Tribunal in appeal No.311/2011 and the same was referred to Depart for de novo inquiry.
- H) The initial inquiry was conducted in year 2010. During the application of RSO 2000 while de novo inquiry was conducted in year 2012 on Police Rules 1975 and at that time RSO was not applicable.
- I) Incorrect. The appellant was recruited on 15.07.2009 and dismissed from service 14.10.2010 on the charges of deliberate absence. He was reinstated into service on 19.04.2012 and his total service is about 1 year and 7 months which is less than three years.
- J) That the respondents may be allowed to add further additional grounds at the time of arguments.

**PRAYER:**

In view of the above stated facts, it is humbly prayed that the appeal of appellant being devoid of legal force and time barred, may kindly be dismissed with costs.

  
District Police Officer,  
Bannu  
(Respondent No.1)

  
Regional Police Officer,  
Bannu Region, Bannu  
(Respondent No.2)

  
Provincial Police Officer,  
Khyber Pakhtunkhwa,  
Peshawar  
(Respondent No.3)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**  
**Service Appeal No.99/2013**

Shah Faisal Constable No.1760  
s/o Ghulam Ibrahim District Police Bannu

(Appellant)

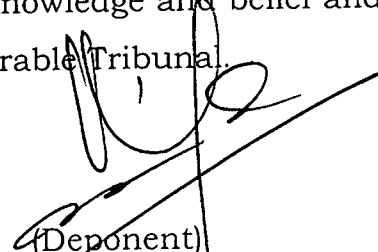
**Versus**


- 1) District Police Officer, Bannu
- 2) Regional Police Officer, Bannu Region, Bannu
- 3) Provincial Police Officer, Khyber Pakhtunkhwa Peshawar


(Respondents)

**COUNTER AFFIDAVIT**

We, the respondents do hereby solemnly affirm and declare that the contents of the attached para wise comments are true and correct to the best of our knowledge and belief and nothing has been withheld or concealed from this Honorable Tribunal.

  
(Deponent)  
**Provincial Police Officer**  
**Khyber Pakhtunkhwa, Peshawar**  
**(Respondent No.3)**

  
(Deponent)  
**Regional police Officer**  
**Bannu Region, Bannu**  
**(Respondent No.2)**

  
(Deponent)  
**District Police Officer,**  
**Bannu**  
**(Respondent No.1)**

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**  
**Service Appeal No.99/2013**

Shah Faisal Constable No.1760  
s/o Ghulam Ibrahim District Police Bannu

(Appellant)

**Versus**


- 1) District Police Officer, Bannu
- 2) Regional Police Officer, Bannu Region, Bannu
- 3) Provincial Police Officer, Khyber Pakhtunkhwa Peshawar

(Respondents)


**AUTHORITY LETTER.**

Mr. Mir Faraz Khan Inspector Legal Bannu is hereby authorized to appear before The Service Tribunal Khyber Pakhtunkhwa Peshawar on behalf of the undersigned in the above cited case.

He is authorized to submit and sign all documents pertaining to the present appeal.

  
**Regional Police Officer,  
Bannu Region, Bannu  
(Respondent No.2)**

  
**Provincial Police Officer,  
Khyber Pakhtunkhwa Peshawar  
(Respondent No.3)**

  
**District Police Officer,  
Bannu  
(Respondent No.1)**

Annexure A

D  
12

ORDER:

My this order will dispose of departmental proceeding initiated under disciplinary rules 1975 against constable Shali Faisal No. 1760 on the following summary of allegations:

That he was selected for recruit course on dated 05-10-2010 but instead of joining the said course he deliberately absented himself from official duty with intention to avoid the said course.

That his service record was perused and it was found that he had already been selected for the said course on several occasions but each time he dithered to join/undergo the said course for which he had been awarded different punishments by the then competent authority still he did not change his attitude.


That the then competent authority, keeping in views his dotted record and the above misconduct, discharged him under police rule 12:21. On dated 02-02-2012, the honorable K.P.K Service tribunal ordered his reinstatement into service with all back benefit as well as initiating denove enquiry into the allegations leveled against him. His service record also transpired that he was enlisted on dated 14-10-2010. During the short period of service he remained absent for a period of 3 months and 25 days which reflected that he was habitual absentee, unwilling worker, incorrigible.

That it was also clear that on 05-10-2010 he had deliberately absented from official duty with intention to avoid the recruit course. Hence he had ceased to become a good police officer by committing the above commission/omission.

As per the direction of Service tribunal the said constable was reinstated into service and allotted him constabulary No. 1760 and Denove enquiry was initiated. Proper charge sheet based upon summary of allegations was issued and served upon the accused official on dated 21-04-2012. Replies of the accused along with relevant papers were entrusted to DSP/Elite for thorough probe into the allegations. Who (enquiry officer) submitted his findings wherein he opined that non joining the recruit course as well as deliberate absence from official duty w.e.f 05-10-2010 to 14-10-2010 have been proved while the remaining allegations were reported to be disproved. Resultantly, opportunity of personal hearing was provided to the accused official in orderly room on dated 17/04/2012 wherein he promised on affidavit that he shall join/complete the incoming recruit course failing which he shall be render himself to be discharged from service or dismissed accordingly. Therefore, keeping in view his statement on affidavit the undersigned exonerated him from the charges.

Keeping in view the above, decision of the honorable service tribunal K.P.K Peshawar and guidance received from CPO, Peshawar vide his office No. 2402/Legal dated 03-08-2012 in the instant case I, WAQAR AHMAD District police officer, Bannu in exercise of the power vested in me under Disciplinary rule 1975 the inquiry papers are ordered to be filed and the interim period between the order of dismissal i.e dated 14-10-2010 and order of reinstatement i.e dated 19-04-2012 (18 months and 5 days) is treated as leave without pay. The absence period from 05-10-2010 to 14-10-2010 is also treated as leave without pay. Pay is also released.

OB No. 307  
Date 17/8/2012

  
District Police Officer,  
Bannu.

No. 1164/13 dated Bannu, the 30/8/2012.

Copy of above is sent for necessary action to :

1. District Account Officer, Bannu.
2. ASP/Headquarter, Bannu.
3. R.I Police lines
4. SRC, Pay Officer and CASI.

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**  
Service Appeal No.99/2013

Shah Faisal Constable No.1760  
S/o Ghulam Ibrahim District Police Bannu

(Appellant)

**Versus**

- 1) District Police Officer, Bannu
  - 2) Regional Police Officer, Bannu Region, Bannu
  - 3) Provincial Police Officer, Khyber Pakhtunkhwa Peshawar
- (Respondents)

**PARAWISE REPLY BY THE RESPONDENTS**

**Respectfully Sheweth:**

**PRELIMINARY OBJECTIONS:**

- 1) That the appeal of appellant is badly time barred.
- 2) That the appellant has approached the Honourable Tribunal with unclean hands
- 3) That the appellant is estopped to file the appeal due to his own conduct.
- 4) That the appeal is bad due to mis-joinder and non-joinder of necessary parties.
- 5) That the appellant has concealed the actual facts from the Honourable Tribunal.
- 6) That the appeal of appellant is not maintainable.

**OBJECTIONS ON FACTS:**

- 1) Incorrect. The appellant has willfully absented from the basic professional training/ courses on several occasions being habitual absentee and unwilling worker.
- 2) Pertains to record.
- 3) Pertains to record.
- 4) Pertains to record.
- 5) Correct.
- 6) Pertains to record.
- 7) The departmental appeal of the appellant was filed on the grounds that period between his dismissal and reinstatement i.e. about 18 months was rightly treated leave without pay by the Respondent No.1 after getting opinion from Respondent No.3. In fact, the appellant has not performed duty during this period.
- 8) Incorrect. Both the orders of the respondents are based on facts and in accordance with law and facts.

**OBJECTIONS ON GROUNDS:**

- A) Incorrect. The orders of the respondents are legal and based on facts and law.
- B) Incorrect. Proper inquiry in accordance with law was initiated against the appellant and after providing all the opportunities, a legal and valid order was passed.
- C) Incorrect. The order of the Honourable Tribunal has been complied in true spirit. On receipt of judgment and opinion of Law Department, the appellant was reinstated into service with immediate effect and de novo inquiry into the matter was conducted. On the basis of findings report, the


inquiry was filed. Subject to he joined the recruit course and provide affidavit. The interim period between his dismissal and reinstatement was treated as leave without pay.

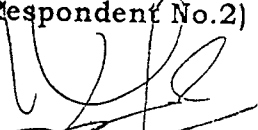
- D) There is no need of issuance show cause notice because the inquiry has been filed in favour of appellant.
- E) Inquiry was filed but the period between dismissal and reinstatement was treated leave without pay on the opinion/ directions of respondent No.3.
- F) Incorrect. The appellant was initially discharged from service on the basis of willful absence from professional course/ training and duty but due to some technical faults, the order of dismissal was converted into reinstatements and de novo inquiry. During the disposal of de novo inquiry, the appellant furnished an affidavit for joining the recruit course in future. He has not performed duty for the period 18 months 05 days between the dismissal dated 14.10.2010 and reinstatement dated 19.04.2012 for which he cannot be paid salary and rightly declared leave without pay. Photocopy enclosed as annexure "A".
- G) Incorrect. The inquiry officer has made reference to the punishment which was set aside by the Honourable Tribunal in appeal No.311/2011 and the same was referred to Depart for de novo inquiry.
- H) The initial inquiry was conducted in year 2010. During the application of RSO 2000 while de novo inquiry was conducted in year 2012 on Police Rules 1975 and at that time RSO was not applicable.
- I) Incorrect. The appellant was recruited on 15.07.2009 and dismissed from service 14.10.2010 on the charges of deliberate absence. He was reinstated into service on 19.04.2012 and his total service is about 1 year and 7 months which is less than three years.
- J) That the respondents may be allowed to add further additional grounds at the time of arguments.

**PRAYER:**

In view of the above stated facts, it is humbly prayed that the appeal of appellant being devoid of legal force and time barred, may be dismissed with costs.

  
District Police Officer,  
Bannu  
(Respondent No.1)

  
Regional Police Officer,  
Bannu Region, Bannu  
(Respondent No.2)

  
Provincial Police Officer,  
Khyber Pakhtunkhwa,  
Peshawar  
(Respondent No.3).

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**  
Service Appeal No.99/2013

Shah Faisal Constable No.1760  
s/o Ghulam Ibrahim District Police Bannu

(Appellant)

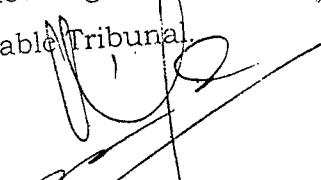
**Versus**


- 1) District Police Officer, Bannu
- 2) Regional Police Officer, Bannu Region, Bannu
- 3) Provincial Police Officer, Khyber Pakhtunkhwa Peshawar


(Respondents)

**COUNTER AFFIDAVIT**

We, the respondents do hereby solemnly affirm and declare that the contents of the attached para wise comments are true and correct to the best of our knowledge and belief and nothing has been withheld or concealed from this Honorable Tribunal.

  
(Deponent)  
Provincial Police Officer  
Khyber Pakhtunkhwa, Peshawar  
(Respondent No.3)

  
(Deponent)  
Regional police Officer  
Bannu Region, Bannu  
(Respondent No.2)

  
(Deponent)  
District Police Officer,  
Bannu  
(Respondent No.1)



Annexure "A"

D  
12

ORDER:

My this order will dispose of departmental proceeding initiated under disciplinary rules 1975 against constable Shah Faisal No. 1760 on the following summary of allegations:

That he was selected for recruit course on dated 05-10-2010 but instead of joining the said course he deliberately absented himself from official duty with intention to avoid the said course.

That his service record was perused and it was found that he had already been selected for the said course on several occasions but each time he dithered to join/undergo the said course for which he had been awarded different punishments by the then competent authority still he did not change his attitude.

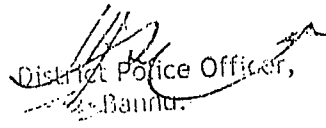
That the then competent authority, keeping in views his dotted record and the above misconduct, discharged him under police rule 12:21. On dated 02-02-2012, the honorable K.P.K Service tribunal ordered his reinstatement into service with all back benefit as well as initiating denove enquiry into the allegations leveled against him. His service record also transpired that he was enlisted on dated 14-10-2010. During the short period of service he remained absent for a period of 3 months and 25 days which reflected that he was habitual absentee, unwilling worker, incorrigible.

That it was also clear that on 05-10-2010 he had deliberately absented from official duty with intention to avoid the recruit course. Hence he had ceased to become a good police officer by committing the above commission/omission.

As per the direction of Service tribunal the said constable was reinstated into service and allotted him constabulary No. 1760 and Denove enquiry was initiated. Proper charge sheet based upon summary of allegations was issued and served upon the accused official on dated 21-04-2012. Replies of the accused along with relevant papers were entrusted to DSP/Elite for thorough probe into the allegations. Who (enquiry officer) submitted his findings wherein he opined that non joining the recruit course as well as deliberate absence from official duty w.e.f 05-10-2010 to 14-10-2010 have been proved while the remaining allegations were reported to be disproved. Resultantly, opportunity of personal hearing was provided to the accused official in orderly room on dated 17/04/2012 wherein he promised on affidavit that he shall join/complete the incoming recruit course failing which he shall be render himself to be discharged from service or dismissed accordingly. Therefore, keeping in view his statement on affidavit the undersigned exonerated him from the charges.

Keeping in view the above, decision of the honorable service tribunal K.P.K Peshawar and guidance received from CPO, Peshawar vide his office No. 2402/Legal dated 03-08-2012 in the instant case I, WAQAR AHMAD District police officer, Bannu in exercise of the power vested in me under Disciplinary rule 1975 the inquiry papers are ordered to be filed and the interim period between the order of dismissal i.e dated 14-10-2010 and order of reinstatement i.e dated 19-04-2012 (18 months and 5 days) is treated as leave without pay. The absence period from 05-10-2010 to 14-10-2010 is also treated as leave without pay. Pay is also released.

OB No. 807  
Dated 17/9/2012

  
District Police Officer,  
Bannu.

No. 1112/13 dated Bannu, the 30/9/2012.

Copy of above is sent for necessary action to :

1. District Account Officer, Bannu.
2. ASP/Headquarter, Bannu.
3. R.I Police lines
4. S.R.C, Pay Officer and CASI.

**BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR**

Service Appeal No 99/2013

Shah Faisal.....Appellant

**V E R S U S**

DPO & two others.....Respondents

**Replication on behalf of the appellant**

**Rely to Preliminary Objections**

All the objections raised by the respondents are incorrect and denied, as in instant appeal all necessary parties have been imp leaded, the appellant has come to this honorable Tribunal with clean hands and the instant appeal is well within time. The appellant is not estopped by his own conduct to bring the present appeal, the appellant has concealed nothing from this honorable tribunal and the present appeal is maintainable.

**Reply to Facts/Grounds**

The comments of the respondents are full of admissions, and they have not denied the pleas taken by the appellant. The comments of the respondents are full of contradictions and they have failed to deny the appellant version. Respondents have decided the appeal in very strange terms, as on one hand they have admitted that inquiry against the appellant was filed in favor of the appellant and that the the absence from 05-10-2010 to 14-10-2010 has only proved against the appellant, while on the other hand they have treated the entire period as leave without pay. It is also pertinent to mention here that vide the Judgment of the tribunal the appellant was reinstated with all back benefits, as such the respondents have exceeded their authority.

It is also worthwhile to mention here that besides procedural lapses including the issuance of show cause notice, the appellant has not been treated factually as per record. The findings of the DSP elite Force needs to be requisitioned. Nothing has been communicated to

the appellant and he has thus been condemned unheard. The respondents have also failed to reply and explain some legal questions of the appellant. The appellant has not been treated in accordance with law and he has been condemned unheard, thus the impugned orders are not tenable in the eyes of law and liable to be set aside even on this score alone.

It is there fore prayed that appeal of the appellant may kindly be accepted as prayed for.

Dated:-22-8-2014

SHAH F  
Appellant

Through

Fazal Shah Mohmand

Advocate Peshawar

### AFFIDAVIT

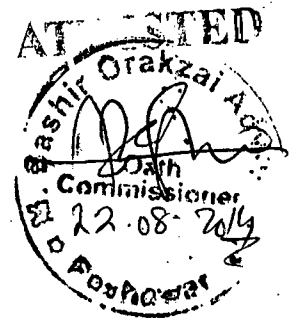
I, Shah Faisal Constable No 1760 S/O Ghulam Ibrahim District Police Bannu, (the appellant) do hereby solemnly affirm and declare on oath that the contents of this Replication are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

Identified by

Fazal Shah Mohmand

Advocate Peshawar

SHAH F  
DEPONENT



66 A 22

KHYBER PAKHTUNKHA SERVICE TRIBUNAL, PESHAWAR.  
JUDICIAL COMPLEX (OLD), KHYBER ROAD,  
PESHAWAR.

No.

D.B (1)

APPEAL No. 09 of 2013

5755  
17/6/09

Shah Faisal (Constable)

Appellant/Petitioner

Versus

District Police officers Bannu

RESPONDENT(S)

Notice to Appellant/Petitioner Shah Faisal

Constable No-1760, S/o Chulain Ibrahim

District Police officer Bannu

Kot. Beli PS Saddar Bannu

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 28/6/2019 at 8:00 A.M.

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

Insp. Legal / SHO PS Saddar

District Police Officer

BANNU

176

Registrar,

Khyber Pakhtunkhwa Service Tribunal,  
Peshawar.

جناب عالی!

حروض ہوں کہ صحیح سناہ منزل ولد علاء البراء ہم سے

بلند خاطرہ خلی پر بحوالہ عدد 838 حوض 19/10/98

نمبر 404-324-302 انٹان صدر میں حسب خاطرہ

دعویداری ہو کر بطابق و کارڈ انٹان حرم اشھاری  
تھے۔ نقل FIR بطور ثبوت ہمراہ لف ہے

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19-6-09

صدر

معاون

25 838 19/10 وقت 13:15 بجے

وقت رپورٹ 19/10 وقت 14:00 بجے چاکر لکھی 19/10 وقت 15:00 بجے

بت اطلاع: بزم قیامت سجاد الرحمن ولد عطاء الرحمن سکندر بلنڈ فاطمہ خیل پتھر 31/32 سال  
 نسبت جرم (معدومہ) حال ایچ پی بی۔  
 34-404-324-302 PPC

بندہ قاضی نے اور بت گلی، شہارخ عالم نذر اسماہ پر چوٹی دکھان

نسبت ملزم (م) مشاب تائب عرف گلد پ (2) فیصل خان لیسرین غلام ابراہیم (3) نور خان ولد شفیق اسماہ

بت جو قیامت کے تعلق کی گئی اطلاع: بزم قیامت میں گرفتار ہوئے۔  
 پتھر سید گری صراہ اسلام و پورٹ پر صدر ڈپٹی

بت سے روانگی کی تاریخ و وقت بہ سٹریٹ لکھن سٹیشن رپورٹ

ابتدائی اطلاع نیچے درج کرو۔ ایک تحریریں صراہ اسلام و پورٹ بلنڈ فاطمہ خیل  
 جناب رضی اللہ عنہم SHO بدست کنسٹیبل نثار اللہ 1699 موصول ہو کر ڈپٹی سے رپورٹ: سجاد الرحمن  
 ولد عطاء الرحمن سکندر بلنڈ فاطمہ خیل پتھر 31/32 سال NIC نمبر 1-6-2426-75-11101 اور آ  
 نمبر 44 84 19108 33 0 آج مورخہ 19/10 بجے 14:00 بجے پیرائٹیشن برادر آشر غیور  
 پتھر 33/34 سال ہتھام سول ہسپتال ہون و پورٹ کرنا صیکہ اسروز میں احد برادر م غیور  
 لیسرین صراہ مشاب تائب آڈائٹنگ نثار جمع جامع مسجد نذر ENG پلپ جڑت تھے۔ برادر م  
 رضی اللہ عنہم صراہ مشاب تائب کی ڈرائیونگ کر رہے تھے۔ جبکہ میں سخت ہتھ تھے۔ جب گلی شہار  
 عالم نذر اسماہ پر چوٹی دکھان ہوئے۔ تقریباً 500 یو پی کے تحت سڑک کمرے میں پہلے سے  
 موجود صلیب نذر اسماہ تائب عرف گلد پ کی حالت پر غیور نے فیصل خان مسیح بہ کاندھ  
 لیسرین غلام ابراہیم نمبر 3 نور خان ولد شفیق مسیح یہ بارے غیور سے کہنا کہ دلیر لڑ چکے تھے  
 جو میں میرا قے قریب لڑنے لڑ میں مشاب تائب عرف گلد پ نے ہمارے صراہ مشاب تائب کی روک  
 دیکر نیچے گرا دیے۔ اور کہا کہ آپ لوگوں کو میں نے دیکھا اور پتھر آئے سے منع کیا تھا۔ مگر آپ  
 نہ مانے اور ساتھ میں صلیب نور خان، فیصل خان کو حملہ دیا۔ کہ مارا پھینک کر نہ جائے جس پر  
 میری دونوں نے اپنے اپنے اسلحہ لود سے پھر پیر بہ نسبت قتل ٹائمر ٹیک شروع میں جنہیں ٹائمر ٹیک لیسرین  
 رضی اللہ عنہم تک کر ٹیڈر لڑ رہی ہو کر گریڈ پر جبکہ میں فوجی حسنی سے پانچ لپا علزمان پور و جو  
 موقع سے جاتے ہوئے ملزم مشاب تائب عرف گلد پ نے برادر م سے کہ لیسرین سول 19/10  
 کہ میں ساتھ لے گئے۔ میں بوجہ حالی پر ٹیڈر نہ کر سکا۔ جیسا میں برادر م رضی اللہ عنہم کو کہنا  
 رہ گیا تھا۔ تو وہ موقع سے فرار ہوئے کہ اب نذر لکھان میں آ جاؤ جہاں اہل شہار علم اور اہل  
 حد برادر م رضی اللہ عنہم کے قتل عام اور اپنے اور پیر بہ نسبت قتل ٹائمر ٹیک کرنے اور

سید ارشد رسول نے جانے کا ہر صلہ ہر سہرا  
میں سے جو وہ چاہے وہی پورا کر دینا ہے  
جو وہ چاہے وہی پورا کر دینا ہے  
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جو وہ چاہے وہی پورا کر دینا ہے

MASUD

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دستخط

عہدہ

ذمہ داری کی اطلاع کا دستخط بطور تصدیق ہوگا۔

نام آفیسر تفتیش کنندہ	نمبر پورٹ - تاریخ رپورٹ ضمنی	نمبر پورٹ	نام آفیسر تفتیش کنندہ	تاریخ رپورٹ ضمنی
سعید ملاح	11-12-18	A	محمد اسماعیل	19-10-18
سعید ملاح	22-12-18	4	"	20-10-18
محمد اسماعیل	6-2-19	10	"	23-10-18
محمد اسماعیل	25-2-19	11	"	31-10-18
		12	طارق رضا	03-11-18
		13	محمد اسماعیل	27-11-18
		14	"	10-12-18

### اطلاع جو چالان یا رپورٹ اختتامی کے بھیجنے پر درج کی جائیگی۔

نام و سکونت ملزمان (الف) برائے تجویز حراست میں بھیجا گیا (ب) ضمانت یا چھلک پر (ج) جو برائے تجویز سزا دیے ہیں۔	نام گواہان	بوقت روانگی چالان تفتائی اور دفعہ جس میں کا چالان کیا گیا ہو۔
<p>1. سعید ملاح 2. سعید ملاح 3. سعید ملاح 4. سعید ملاح 5. سعید ملاح 6. سعید ملاح 7. سعید ملاح 8. سعید ملاح 9. سعید ملاح 10. سعید ملاح</p>	<p>1. محمد اسماعیل 2. محمد اسماعیل 3. محمد اسماعیل 4. محمد اسماعیل 5. محمد اسماعیل 6. محمد اسماعیل 7. محمد اسماعیل 8. محمد اسماعیل 9. محمد اسماعیل 10. محمد اسماعیل</p>	<p>MHC Sub-6 11 12 13 14</p>